

No. 12335

United States
Court of Appeals
For the Ninth Circuit.

ESTATE OF MYRON SELZNICK, Deceased,
BANK OF AMERICA NATIONAL TRUST
AND SAVINGS ASSOCIATION, DAVID O.
SELZNICK and CHARLES H. SACHS,
Executors,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of Record

Upon Petition to Review a Decision of the Tax Court
of the United States

FILED

FEB 2 - 1950

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES

For Petitioner:

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W. L. NOSSMAN, ESQ.,
LUCIEN W. SHAW, ESQ.

For Respondent:

E. A. TONJES, ESQ.

Docket No. 14985

ESTATE OF MYRON SELZNICK, Deceased,
BANK OF AMERICA NATIONAL TRUST
AND SAVINGS ASSOCIATION, DAVID O.
SELZNICK and CHARLES H. SACHS, Ex-
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Petitioners,

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COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES

1947

June 23—Petition received and filed. Taxpayer
notified. Fee paid.

June 25—Copy of petition served on General
Counsel.

June 23—Request for Circuit hearing in Los An-
geles, filed by taxpayer. 7/14/47 Granted.

Aug. 19—Answer filed by General Counsel.

1947

Aug. 20—Copy of answer served on taxpayer—Los Angeles Calendar.

1948

Sept. 23—Hearing set November 29, 1948 in Los Angeles, California.

Nov. 29—Hearing had before Judge Van Fossan on merits. Stipulation of facts with Exhibits 1-A thru 11-K attached. Petitioner's brief due 1/13/49. Respondent's brief 2/14/49. Petitioner's reply 3/7/49.

Dec. 21—Transcript of hearing 11/29/48 filed.

1949

Jan. 11—Brief filed by taxpayer. Copy served.

Feb. 1—Motion for extension to 3/12/49 to file brief, filed by General Counsel. 2/2/49 Granted to 3/12/49.

Apr. 1—Memorandum Opinion rendered, Judge Van Fossan. Decision will be entered under Rule 50. Copy served.

Apr. 13—Motion to withdraw the memorandum opinion and to permit filing of petitioner's supplementary brief, brief lodged, filed by taxpayer. 4/14/49 Denied.

Apr. 25—Motion for review by the Court of report of a division filed by taxpayer. 4/27/49 Denied.

May 3—Computation for entry of decision filed by General Counsel.

May 4—Hearing set 6/1/49 on settlement.

May 31—Stipulation with respect to entry of decision under Rule 50 filed.

1949

June 3—Decision entered. Judge Van Fossan.
Div. 9.

June 7—Order and decision entered. Judge Arundell. Div. 7.

July 29—Petition for review by U. S. Court of Appeals, 9th Circuit with assignments of error filed by taxpayer.

July 29—Proof of service filed.

July 29—Designation of record filed by taxpayer. Service acknowledged thereon.

Aug. 8—Certified copy of order from 9th Circuit for transmission of original exhibits 2-B, 3-C, 4-D, 5-E, 6-F, 7-G, 8-H, 9-I and 10-J filed.

The Tax Court of the United States

Docket No. 14985

ESTATE OF MYRON SELZNICK, Deceased,
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vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The Estate of Myron Selznick, deceased, hereby

petitions for a redetermination of the asserted deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (LA:ET:90D:NAB) dated March 27, 1947, and as a basis for this proceeding alleges:

1. Bank of America National Trust and Savings Association, a national banking association, David O. Selznick and Charles H. Sachs are the duly appointed and acting executors of the last will and testament of Myron Selznick, who died on March 23, 1944. The Federal estate tax return of the estate of said decedent was duly filed with the Collector of Internal Revenue for the 6th District of California on June 22, 1945 and the sum of \$294,099.92 was paid to said Collector on said date as Federal estate tax of said estate.

2. The notice of deficiency (a true and correct copy of which with accompanying statement is attached hereto and is marked Exhibit A) was mailed by respondent on March 27, 1947.

3. The taxes in controversy are estate taxes in the amount of \$409,634.05—the asserted deficiency of \$384,634.05 plus the amount of an overpayment hereby claimed of not less than \$25,000.

4. The determination of deficiency in tax set forth in the said notice of deficiency is based upon the following errors:

- (1) Respondent erred in determining that the value of 100 shares owned by decedent of capital stock of Myron Selznick, Ltd., a New York corporation, was \$39,958.34 on the date of death of

the decedent and in failing to determine that the value of said stock was not in excess of \$12,592.50 on said date.

(2) Respondent erred in determining that the value of 1000 shares owned by the decedent of capital stock of United Studios, Inc., a Delaware corporation, was \$12,000 on the date of decedent's death and in failing to determine that the value of said stock was not in excess of \$6,000 on said date.

(3) Respondent erred in determining that the value of commissions payable by clients, whom decedent represented as agent, was \$271,590.21 and in failing to determine that the value of said commissions payable was not in excess of \$79,390.42.

(4) Respondent erred in determining that the value of the claim of decedent for commissions receivable under a contract between Myron Selznick and Myron Selznick, Inc., parties of the first part and Leland Hayward, Leland Hayward, Inc., Leland Hayward and Co., Ltd., Leeward Royalties, Inc., Nat Deverich and Hayward-Deverich, parties of the second part, was \$9,594.77 on the date of decedent's death and in failing to determine that the value of said claim was not in excess of \$2,186.67.

(5) Respondent erred in determining that the value of the claim of decedent for commissions under an agency contract with Hunt Stromberg was \$200,000 on the date of decedent's death and in failing to determine that said claim had no value on said date.

(6) Respondent erred in determining that there

should be included in the gross estate (as additional item 64 on Schedule F, Other Miscellaneous Property) a settlement with Marguerite Roberts of a claim of decedent against said individual for commissions, in determining that the value of said claim was \$6,500 on the date of decedent's death, and in failing to determine that said claim had no value on said date.

(7) Respondent erred in determining that there should be included in the gross estate (as additional item 65 on Schedule F, Other Miscellaneous Property) a claim of decedent against Robert Donat for monies advanced, in determining that the value of said claim was \$21,866.36, on the date of decedent's death, and in failing to determine that said claim had no value on said date.

(8) Respondent erred in determining that there should be included in the gross estate of decedent transfers of property made during decedent's life to a trust made by decedent on January 29, 1932, in the amount of \$152,951.83, and in failing to determine that no amount should be included in the gross estate of decedent on account of transfers of property to said trust in excess of the amount of \$130,817.79, which was reported as item 1 of Schedule G of Form 706 filed by said estate.

(9) Respondent erred in including in the gross estate of decedent the value of life insurance policies transferred by decedent to the trust made by him on January 29, 1932, and mentioned in paragraph (8) above, in the amount of \$148,805.10, and in failing to determine that no amount should be

included in said gross estate on account of said insurance policies in excess of the amount of \$39,470.21, which was reported as item 2 in Schedule G of Form 706 filed by said estate.

(10) Respondent erred in failing to allow as a deduction a claim of Florence A. Selznick against the estate in the amount of \$14,535.01.

(11) Respondent erred in failing to allow as a deduction a claim of Mildred Selznick against the estate in the amount of \$27,575.00.

(12) Respondent erred in failing to allow deduction of certain Federal and state income taxes and state property taxes, and interest thereon, accrued prior to the date of decedent's death.

(13) Respondent erred in failing to allow deduction of certain administration expenses including commissions of the executors, extraordinary counsel fees, expenses of preparation of the Federal Estate Tax Return and reasonable fees of tax counsel for (a) the preparation of the petition herein; (b) for proceedings within the Bureau of Internal Revenue prior to trial; (c) for the trial and briefing of these proceedings before the Tax Court of the United States and (d) for the representation of the estate in any appellate court proceedings which may eventuate.

(14) Respondent erred in failing to allow a credit for the amount of estate, inheritance, legacy or succession taxes actually paid or payable to the State of California or any other State or Territory or the District of Columbia in respect

of property of the decedent included in the gross estate.

(15) Respondent erred in determining that there is any deficiency and in failing to determine an overpayment.

5. The facts upon which the estate relies as a basis of this proceeding are as follows:

(1) With respect to the assignment of error set forth in paragraph 4 (1) the facts are:

(a) On the date of his death, decedent, Myron Selznick, owned 100 shares of the capital stock of Myron Selznick, Ltd., a New York corporation engaged in the business of acting as agent for actors and directors.

(b) The capital stock of Myron Selznick, Ltd., was never at any time listed on any stock exchange and was never at any time traded in over the counter or otherwise sold or exchanged. The 100 shares of stock of said corporation owned by the decedent represented all the outstanding shares of said corporation.

(c) The value of said shares on the date of decedent's death was not in excess of \$125,925 per share or a total value for the 100 shares of \$12,592.50. Said shares were valued at said sum in item 22, Schedule B of Form 706 filed by the estate.

(d) In his final determination of the asserted deficiency, respondent valued said shares of stock at \$39,958.34.

(2) With respect to the assignment of error set forth in sub-paragraph 4 (2) the facts are:

(a) On the date of his death, decedent owned 1000 shares of the capital stock of United Studios, Inc., a Delaware corporation, engaged in the business of holding real property and collecting rents therefrom.

(b) The capital stock of United Studios, Inc., was never at any time listed on any stock exchange and was never at any time traded in over the counter or otherwise regularly sold or exchanged.

(c) The value of said shares of United Studios, Inc., on the date of decedent's death was not in excess of \$6 per share or \$6,000 for the 1,000 shares owned by the decedent. Said shares were valued at said amount in item 25 of Schedule B of Form 706 filed by the estate.

(d) In his final determination of the asserted deficiency, respondent valued said shares of stock at \$12,000.

(3) With respect to the assignment of error set forth in sub-paragraph 4 (3) the facts are:

(a) Prior to his death, decedent had for many years acted as agent for actors, actresses, producers, writers, directors and others engaged in the motion picture industry and in the entertainment field generally, by obtaining for them employment, handling their relations with their employers and otherwise assisting them in their professional activities. In this capacity, decedent had entered agency contracts with a large number of such individuals by the terms of which he was entitled for his services to payment of commissions measurable

by a percentage of the compensation of such individuals.

(b) On the date of the death of the decedent, there were unpaid amounts totalling \$79,390.42 accrued and payable to decedent as commissions for services theretofore rendered by decedent under such agency contracts then in effect.

(c) As of the date of decedent's death, the collection under said agency contracts of any amounts in addition to the amounts accrued and payable on said date was wholly contingent and uncertain and it was not possible to determine on said date what further amounts, if any, might be collected thereunder. As of said date said agency contracts did not represent an asset of the estate (to any extent in excess of the amounts accrued and payable on said date) which could have been sold.

(d) On the date of decedent's death, the value of claims of decedent under such agency contracts was not in excess of the sum of \$79,390.42 representing the amounts accrued on said date for commissions previously earned. Said value on account of said commissions was reported in item 54, Schedule F of Form 706 filed by the estate.

(e) In his final determination of the asserted deficiency, respondent valued said claims of decedent under agency contracts at \$271,590.21.

(4) With respect to the assignment of error set forth in sub-paragraph 4 (4) the facts are:

(a) On September 30, 1940, decedent made a contract in which he and Myron Selznick, Inc., were parties of the first part and Leland Hayward,

Leland Hayward, Inc., a New York corporation, Leland Hayward and Co., Ltd., a California corporation, Leeward Royalties, Inc., a California corporation, Nat Deverich and Hayward-Deverich, a California corporation, were parties of the second part.

(b) Under said contract, decedent transferred to the parties of the second part certain agency contracts and received in exchange therefor a right to a portion of the commissions derived by the parties of the second part therefrom, payable if, as and when such commissions were received by the parties of the second part.

(c) As of the date of decedent's death, there was accrued and payable to decedent under said contract the sum of \$2,186.67.

(d) As of the date of decedent's death, the collection under said contract of any amounts in addition to the sum accrued and payable on said date was wholly contingent and uncertain and it was not possible to determine on said date what further amounts, if any, might be collected thereunder.

(e) The value of the claim of decedent under said contract on the date of decedent's death was \$2,186.67, which amount was reported in item 55 of Schedule F of Form 706 filed by the estate.

(f) In his final determination of the asserted deficiency, respondent valued said claim of decedent under said contract at \$9,594.77.

(5) With respect to the assignment of error set forth in sub-paragraph 4 (5) the facts are:

(a) In the latter part of 1941, decedent was

employed by Hunt Stromberg, a motion picture director, to advise and assist in the organization and operation of an independent motion picture production enterprise, being organized by Stromberg.

(b) In 1942, said employment was reduced to writing in an agency contract whereby decedent was employed by Hunt Stromberg as agent and was to receive as commission 10% of the stock in the corporation formed to carry on said enterprise and 10% of Stromberg's compensation from said enterprise, only if, as and when such compensation should be received by Stromberg from said enterprise for his personal use.

(c) As of the date of decedent's death, a dispute had arisen between Stromberg and decedent as to said agency contract and Stromberg was then asserting that decedent was entitled to nothing thereunder. Furthermore, after decedent's death, Stromberg asserted that said death terminated said agency contract and all of his obligations thereunder.

(d) As of the date of decedent's death, the collection of any amounts under said contract with Stromberg was wholly contingent and uncertain and the claim of decedent thereunder had no value.

(e) In his final determination of the asserted deficiency, respondent valued decedent's claim against Hunt Stromberg at \$200,000.

(6) With respect to the assignment of error set forth in sub-paragraph 4 (6) the facts are:

(a) Prior to the date of his death, the decedent

had had an agency contract with Marguerite Roberts whereby he represented said individual as agent. Prior to said date, decedent had determined that he was not receiving the amounts due to him under said agency contract and had brought an action against Marguerite Roberts in the Superior Court of the State of California in and for the County of Los Angeles for damages for breach of said contract.

(b) Said action was pending on the date of decedent's death and was then and had theretofore been contested by the defendant, Marguerite Roberts, and no recovery therein had been obtained.

(c) After decedent's death, the executors of the estate settled the claim against Marguerite Roberts for the sum of \$6,500 paid to the estate in settlement thereof.

(d) On the date of decedent's death, the collection of any amounts from Marguerite Roberts was wholly contingent and uncertain and said claim against Marguerite Roberts had no value.

(e) In his final determination of the asserted deficiency, respondent valued decedent's claim against Marguerite Roberts at \$6,500.

(7) With respect to the assignment of error set forth in sub-paragraph 4 (7) the facts are:

(a) In the year 1940, Robert Donat, a British motion picture actor, was a client of Myron Selznick (London) Ltd., an agency controlled by the decedent. In the summer of 1940, Robert Donat sent his wife and children to the United States to stay for the duration of the war.

(b) During the summer of 1940, decedent was asked to advance to Robert Donat funds for the support, in the United States, of Mrs. Donat and her children, because they had no funds in the United States. Decedent agreed thus to advance funds because he desired to retain the good will of Robert Donat as a client of his London agency and because he believed that Donat might later come to the United States in which event he might employ decedent as agent in the United States.

(c) During the period between August, 1940, and the summer of 1943, decedent advanced to Mrs. Donat sums totalling \$21,886.36.

(d) During the period between August, 1940, and the summer of 1943, decedent had received no repayment in any form of the amounts advanced to Mrs. Donat, and inquired as to when he could expect to be reimbursed for the sums thus advanced. Decedent received no satisfactory reply from Robert Donat and, thereupon, ceased making further payments.

(e) Between 1940 and the present time, Robert Donat has never been in the United States and neither he nor his wife have any property in the United States. As of the date of decedent's death, no amount had been collected on account of the sums advanced to Mrs. Donat, and no acknowledgment of the obligation therefor had been obtained from Mr. or Mrs. Donat.

(f) The executors of decedent's estate have made repeated efforts to collect this claim but have received no payment thereon and no acknowledg-

ment of the obligation. The executors have been informed that it would be illegal for Robert Donat to incur an indebtedness outside of England exceeding the amount of funds which he could have lawfully remitted outside of England.

(g) As of the date of decedent's death, said claim was not enforceable and not collectible and had no value.

(h) In his final determination of the asserted deficiency, respondent valued decedent's claim against Robert Donat at \$21,886.36.

(8) With respect to the assignment of error set forth in sub-paragraph 4 (8) the facts are:

(a) On January 29, 1932, decedent made a declaration of trust as trustor and named therein Citizens' National Trust and Savings Bank of Los Angeles, a national banking association, as trustee and said trust was designated as Citizens' National Trust and Savings Bank Trust #6969.

(b) Prior to June 6, 1932, decedent made transfers of property to said trust, which property as of the date of decedent's death had a value of \$152,951.83.

(c) By the terms of said trust, decedent reserved the right to receive in monthly payments the income of the property transferred to said trust and provided that none of the income of said property for the period between the last such monthly payment and the date of decedent's death was to be received by decedent or by his estate but was instead to belong and go to the beneficiaries entitled to the next estate in said trust.

(d) Said transfers made to said trust prior to June 6, 1932, were not transfers intended to take effect in possession or enjoyment at decedent's death and were not transfers under which decedent retained for his life or any period not ending before his death the possession or enjoyment of, or the income from, said property.

(e) After June 6, 1932, decedent made further transfers of property to said trust which property had a value as of the date of decedent's death of \$130,817.79, which amount is conceded to be includible in the estate (and of which all but \$28.81 was reported as includible in the estate in item 1 of Schedule G of Form 706 filed by the estate).

(f) None of the transfers of property to said trust in excess of the amount of \$130,817.79 referred to in sub-paragraph (e) above are includible in the gross estate of decedent.

(g) In his final determination of the asserted deficiency, respondent included in the gross estate of decedent the property having a value as of the date of decedent's death of \$152,951.83 and \$130,817.79 referred to in sub-paragraphs (b) and (e) above, respectively.

(9) With respect to the assignment of error set forth in sub-paragraph 4 (9) the facts are:

(a) On January 29, 1932, decedent made a declaration of trust as trustor (as heretofore alleged in paragraph 5 (8) (a)), naming Citizens' National Trust and Savings Bank of Los Angeles as trustee, which trust was designated as Citizens' National Trust and Savings Bank Trust #6969.

(b) On or about January 29, 1932, decedent transferred by assignment to said trust certain insurance policies on his life. Said policies are listed in Schedule G of Form 706 filed by the estate.

(c) After the transfer of said policies to the trustee, the amounts receivable thereunder as insurance were receivable by said trustee and this was true at all times after said transfers and until payment was made to the trustee under said policies after decedent's death.

(d) Said transfers of insurance policies made to said trust prior to June 6, 1932, were not transfers intended to take effect in possession or enjoyment at decedent's death and were not transfers under which decedent retained for his life or any period not ending before his death the possession or enjoyment of, or the income from said property.

(e) At no time after January 10, 1941, did decedent possess any incident of ownership in the insurance policies thus transferred to said trust.

(f) The total amount received by said trustee as insurance under said policies was \$188,275.31 of which the proportion equivalent to the proportion of the total premiums for such insurance paid on or before January 10, 1941, was \$148,805.10 and the proportion equivalent to the proportion of total premiums for such insurance paid after January 10, 1941, was \$39,470.21.

(g) Of said amount received by said trustee as insurance under said policies, \$39,407.58 was reported as includible in the estate in Schedule G of Form 706 filed by the estate.

(h) None of the amount received by said trustee as insurance under said policies, in excess of the amount of \$39,470.21 referred to in sub-paragraph (f) above, is includible in the gross estate of decedent.

(i) In his final determination of the asserted deficiency, respondent included in the gross estate of decedent said amount of \$39,470.21 referred to in sub-paragraphs (f) and (h) above and in addition included therein the additional amount of \$148,805.10 referred to in sub-paragraph (f) above, on account of said insurance.

(10) With respect to the assignment of error set forth in sub-paragraph 4 (10) the facts are:

(a) Florence A. Selznick was the mother of decedent and of his brother, David O. Selznick. Commencing prior to 1936 and at all times thereafter, Florence A. Selznick was without funds with which to provide support for herself.

(b) Prior to 1936 decedent and David O. Selznick agreed to provide for the support of Florence A. Selznick by paying for said purpose equal sums weekly. Said agreement was made in view of their respective obligations to support Florence A. Selznick as provided in California Civil Code, Section 206.

(c) Commencing in 1936, the weekly payments made by decedent for the support of Florence A. Selznick were made by the segregation of funds of decedent by means of accounting records maintained by him and considered by decedent and Florence A. Selznick to establish her right to said

funds. Said funds were at all times held for the benefit of Florence A. Selznick and decedent had no beneficial right, title or interest therein. From time to time, amounts were withdrawn from said funds solely by or for the benefit of Florence A. Selznick.

(d) On the date of decedent's death, there remained in said funds the sum of \$14,535.01 which had not yet been expended by or on behalf of Florence A. Selznick.

(e) On said date, the segregation of said funds by decedent represented a transaction completed prior to the date of death of decedent whereby the rights of Florence A. Selznick therein became fully vested, and said segregation did not constitute an executory contract.

(f) The agreement of decedent to transfer funds to Florence A. Selznick by means of segregating them was bona fide and was in consideration of his obligation to support Florence A. Selznick and of the agreement of David O. Selznick to discharge his obligation of support by providing similar sums for the support of Florence A. Selznick which agreement represented adequate and full consideration in money or money's worth.

(g) Florence A. Selznick filed a claim against the estate for the amount transferred to her by decedent, \$14,535.01, which claim was on June 6, 1944, allowed and approved by the Superior Court of the State of California in and for the County of Los Angeles in the probate proceedings in said

estate, and the amount of said claim was paid to Florence A. Selznick by the estate on June 20, 1944.

(h) The claim of Florence A. Selznick against said estate for \$14,535.01 was properly allowable as a deduction from the value of the gross estate (as reported in item 4 of Schedule K of Form 706 filed by said estate).

(i) In his final determination of the asserted deficiency, respondent did not allow said claim of Florence A. Selznick as a deduction from the value of the gross estate.

(11) With respect to the assignment of error set forth in sub-paragraph 4 (11) the facts are:

(a) In February, 1943, Mildred Selznick, was and for many years had been the wife of Howard Selznick, a brother of decedent and David O. Selznick. In said month, Mildred Selznick commenced an action against decedent and David O. Selznick in the Superior Court of the State of California in and for the County of Los Angeles.

(b) In said action, Mildred Selznick asserted two claims against decedent and David O. Selznick as follows:

(i) A claim for damages for breach of a contract which she alleged to have been made with her by decedent and David O. Selznick by the terms of which she alleged that she had surrendered her right to obtain a divorce from Howard Selznick and had rendered services in caring for him in exchange for the alleged agreement of decedent and David O. Selznick to pay her sums necessary for her support for the rest of her natural life, pro-

vide her with living accommodations for herself for the rest of her natural life and for her children until they reached their majority, and in addition pay her at least \$75 per week and provide financial security for her so long as she should live.

(ii) A claim in tort for alleged deceit on the part of decedent and David O. Selznick in inducing her to forego her claims and rights against Howard Selznick when decedent and David O. Selznick had no intention of carrying out the contract alleged to have been made with her.

(c) Said action in the Superior Court was resisted by decedent and was pending at the date of his death. Thereafter it was vigorously resisted by his estate. Ultimately, prior to a trial of said action and in March, 1945, the executors of decedent's estate and David O. Selznick agreed with Mildred Selznick upon a compromise settlement of both of her claims in said action in the Superior Court by the payment to her of money and property valued at \$55,150.00 of which the estate's share was \$27,575.00

(d) Said compromise settlement was submitted to the Superior Court of the State of California in and for the County of Los Angeles in a special proceeding in the probate of decedent's estate. In said special proceedings, on May 1, 1945, the Superior Court approved the compromise settlement and allowed and approved the claim of Mildred Selznick theretofore filed, to the extent of \$27,575.00. Said sum was paid to Mildred Selznick by the estate on or about May 5, 1945.

(e) The claims of Mildred Selznick thus settled by a payment to her by the estate of \$27,575.00 were (i) as to the claim based upon the alleged contract, contracted bona fide and for an adequate and full consideration in money or money's worth, and, (ii) as to the claim in tort for alleged deceit represented an alleged liability imposed by the law of the State of California and arising out of a tort of decedent. The amount paid in settlement of said claims represented an allowable deduction from the value of the gross estate (as reported in item 26 of Schedule K of Form 706 filed by the estate).

(f) In his final determination of the asserted deficiency, respondent did not allow said claim of Mildred Selznick as a deduction from the value of the gross estate.

(12) With respect to the assignment of error set forth in sub-paragraph 4 (12) the facts are:

Prior to the final determination of Federal estate tax liability, decedent's estate will have paid certain items of the character described in the assignment of error in paragraph 4 (12) of this petition. Such items are properly deductible in the final determination of the net estate.

(13) With respect to the assignment of error set forth in sub-paragraph 4 (13) the facts are:

Prior to the final determination of Federal estate tax liability, decedent's estate will have incurred further liability for items of the character described in the assignment of error in paragraph 4 (13) of this petition. Such items are properly deductible in the final determination of the net estate.

(14) With respect to the assignment of error set forth in sub-paragraph 4 (14) the facts are:

Prior to the final determination of Federal estate tax liability of decedent's estate certain items of taxes of the character described in the assignment of error in paragraph 4 (14) of this petition will have been paid or be payable. Decedent's estate will be entitled to an appropriate credit therefor.

(15) Myron Selznick, hereinbefore referred to as the decedent, was born on October 5, 1898, in Pittsburgh, Pennsylvania and died a resident of Beverly Hills, California, on March 23, 1944. His estate is being administered under the laws of the State of California.

Wherefore, petitioner prays that this Court determine that there is no deficiency in estate tax; that on the contrary there has heretofore occurred an overpayment of Federal estate tax; that the Court determine as a part of its decision that the entire overpayment was paid within three years before the mailing of the deficiency notice, or in the event that any further payment should be made, that such further payment was made after the mailing of the notice of deficiency; and grant such other and further relief as may be equitable in the premises.

/s/ JOSEPH D. BRADY,

/s/ WALTER L. NOSSAMAN,

/s/ LUCIEN W. SHAW,

Counsel for Petitioner.

State of California,
County of Los Angeles—ss.

H. M. Bardt, being first duly sworn, says that he is Vice President and Trust Officer of Bank of America National Trust and Savings Association, a national banking association, which is one of the duly appointed and acting Executors (with David O. Selznick and Charles H. Sachs), of the Estate of Myron Selznick, deceased, petitioner herein; that affiant is duly authorized to verify the foregoing petition; that affiant has read the foregoing petition, is familiar with the statements contained therein and that the facts stated are true except as to those facts stated to be upon information and belief and those facts he believes to be true.

/s/ H. M. BARDT

Subscribed and sworn to before me this 18th day of June, 1947.

[Seal] /s/ JULIA M. FITZSIMMONS,
Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires February 17, 1948.

EXHIBIT A

Treasury Department
Internal Revenue Service
417 South Hill Street
Los Angeles 13, California

Mar. 27, 1947.

Office of Internal Revenue Agent in Charge,
Los Angeles Division, LA:ET:90D:NAB

Estate of Myron Selznick, Deceased

Bank of America National Trust and
Savings Association et al, Executors
469 North Beverly Drive
Beverly Hills, California

Gentlemen:

You are advised that the determination of the estate tax liability of the above-named estate, discloses a deficiency of \$384,634.05, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the Tax Court of the United States, at its principal address, Washington 25, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are

requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Los Angeles, California, for the attention of LA: Conf. The signing and filing of this form will expedite the closing of your return (x) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

JOSEPH D. NUNAN, JR.,

Commissioner.

By GEORGE D. MARTIN,

Internal Revenue Agent
in Charge.

Enclosures:

Statement

Form of waiver

LA:ET.90D:NAB

District of Sixth California

Estate of Myron Selznick

Date of Death: March 23, 1944

Statement

	Liability	Assessed	Deficiency
Estate Tax	\$678,733.97	\$294,099.92	\$384,634.05

In making this determination of the federal estate tax liability of the above-named estate, careful consideration has been given to the report of examination dated June 28, 1946, to the protest dated November 8, 1946, and to the statements made at the hearing on January 20, 1947.

A copy of this letter and statement has been mailed to your representative, Mr. John B. Milliken, 650 South Spring Street, Los Angeles 14, California, in accordance with the authority contained in the power of attorney executed by you.

Adjustments to net estate:

Net estate for basic tax as disclosed		
by the return		\$ 974,850.04
Additions to value of net estate and		
decreases in deductions:		
Stocks and bonds	\$ 33,365.84	
Other miscellaneous property....	428,848.84	
Transfers	301,848.37	
Executors commissions	3,500.00	
Attorney's fees	17,446.37	
Debts of decedent	42,110.01	827,119.43
		<hr/>
		1,801,969.47

Reductions in value of net estate and
increases in deductions:

Funeral expenses	\$ 154.10	
Miscellaneous administration		
expenses	7,295.44	7,449.54

Net estate for basic tax as adjusted.....	\$1,794,519.93
Net estate for additional tax as	
adjusted	1,834,519.93

Explanation of Adjustments:

Stocks and bonds	Returned	Determined
Item 22	\$ 12,592.50	\$ 39,958.34
Item 25	6,000.00	12,000.00
	<hr/>	<hr/>
	18,592.50	\$ 51,958.34
Difference		\$ 33,365.84

The determined values of \$399.58 per share for stock of Myron Selznick, Ltd. (N.Y.) and of \$12.00 per share for stock of United Studios, Inc., are predicated upon consideration of all relevant factors and elements of value disclosed by the evidence on file, due consideration being given to corporate earning and dividend paying capacity.

Item 54	\$ 79,390.42	\$ 271,590.21
Item 55	2,186.67	9,594.77
Item 59	0	200,000.00
Addl. Item 60—S.A.G. dues		
refund	0.	625.00
Addl. Item 61—Return prem.		
1944 unemployment tax	0	96.59
Addl. Item 62—Return prem.		
P.L.&P.D.	0	44.01
Addl. Item 63—Refund of costs		
by Brannen	0	88.99
Addl. Item 64—Settlement with		
Marguerite Roberts	0	6,500.00

Addl. Item 65—Claim against		
Robt. Donat	0	21,886.36
	<hr/>	<hr/>
	\$ 81,577.09	\$ 510,425.93
Difference		428,848.84

The determined value of item 54 is predicated upon the total amount collected to March 26, 1946, plus one-half of the estimated balances. See exhibit A accompanying 30-day letter for details.

The determined value of item 55 is predicated upon the total amount collected. See exhibit B accompanying 30-day letter for details.

The determined value of item 59 is based on the estimated amount that would have been received by the estate if the contract with Hunt Stromberg had been terminated at date of death and an accounting had of moneys and properties on hand.

Additional items 60, 61 and 62 are refunds received by the estate of dues and premiums paid prior to date of death.

Additional item 63 is a refund of costs received by the estate from Mr. Brannen in connection with the Pastor Hall matter in 1941.

Additional item 64 is the amount received by the estate as settlement in full with Marguerite Roberts on accruals between January 29, 1942 and March 23, 1944.

Additional item 65 is the amount owing to the decedent at date of death by Robert Donat and it is included at balance due because it has not been shown that this claim was at date of death of no value.

Transfers during decedent's life:

The value of the following described property, transferred by the decedent in his lifetime, is included in the gross estate, it being determined that such transfer was intended to take effect in possession or enjoyment at decedent's death and comes within the provisions of section 811(c) of the Internal Revenue Code:

Item 1	\$ 130,788.98	\$ 283,769.62
Item 2	39,407.58	188,275.31
Funeral expenses	5,649.90	5,804.00
Difference		154.10

Funeral expenses are allowed in the amount paid as shown by the evidence on file.

Executors' commissions	\$ 40,000.00	\$ 36,500.00
Difference		3,500.00

Executors' commissions are allowed in the total amount allowed by the Court and paid to date as shown by the evidence on file, as follows:

To Bank of America N.T. & S.A.:
December 29, 1944, on account
of statutory commissions, \$7,-
500; December 28, 1945, com-
missions allowed by the Court
for extraordinary services, \$20,-
000.00; total, \$27,500.00.

To Charles H. Sachs: December
29, 1944, on account of statutory
commissions, \$2,500.00; Janu-
ary 11, 1945, commissions al-
lowed by the Court for extraor-
dinary services, \$6,500.00; total,
\$9,000.00

Grand total of commissions paid, \$36,500.00

Attorneys' fees	\$ 75,000.00	\$ 57,553.63
Difference		17,446.37

Attorneys' fees are allowed in the total amount allowed by the Court and paid to date as shown by the evidence on file, as follows: November 21, 1944, extraordinary fees, \$6,500.00; January 2, 1945, on account of statutory fees, \$5,000.00; December 28, 1945, extra fees, \$20,000.00; March 14, 1946, extra fees, \$22,-553.63; March 14, 1946, on account of statutory fees, \$3,500.00; total, \$57,553.63.

Miscellaneous administration expenses:

Item 13	\$ 1,000.00	\$ 1,295.44
Additional Item 16. Arbitration expense, Andy Devine	0	2,000.00
Additional Item 17, Attorney fees paid to Parker, Milliken & Kohl- meier on account	0	5,000.00
	<hr/>	<hr/>
	\$ 1,000.00	\$ 8,295.44
Difference		7,295.44

Item 13. The amount paid to White & Case for attorney fees and expenses is allowed in lieu of the amount claimed as estimated expense.

Arbitration expenses paid to the S.A.G. is allowed as Additional Item 16 and the amount paid on account to special tax counsel is allowed as additional Item 17.

Debts of decedent:

Item 4	\$ 14,535.01	0
Item 26	27,575.00	0
	<hr/>	<hr/>
	\$ 42,110.01	0
Difference		\$ 42,110.01

Items 4 and 26 are disallowed because the evidence on file shows that they were not contracted for a full and adequate consideration in money or money's worth.

	Computation of Returned	Estate Tax Determined
Gross estate for basic tax	\$1,392,173.45	\$2,156,236.50
Deductions	417,323.41	361,716.57
Net estate for basic tax	\$ 974,850.04	\$1,794,519.93
Net estate for addi- tional tax	\$1,014,850.04	\$1,834,519.93
Gross basic tax		\$ 115,006.79
Credit for estate and inheritance tax		0
Net basic tax.....		\$ 115,006.79
Total gross taxes (basic and addi- tional)	\$ 678,733.97	
Gross basic tax.....	115,006.79	
Net additional tax		563,727.18
Total net basic and additional taxes		\$ 678,733.97
Total tax payable		\$ 678,733.97
Estate tax assessed:		
July 1945 list, page 102, line 3		294,099.92
Deficiency		\$ 384,634.05

Upon receipt of a waiver, or upon the expiration of 90 days from the date of this letter, if a petition is not filed with The Tax Court of the United States, \$292,628.62 of the deficiency will be assessed.

As the balance of the deficiency may be eliminated by credit for State estate, inheritance, legacy, or succession taxes, opportunity will be accorded for the submission of the evidence required by section 81.9 of Regulations 105. If after a reasonable time the evidence is not filed, the balance of the deficiency will be assessed. Please advise when the credit evidence may be expected.

Received and filed June 23, 1947. T.C.U.S.

[Title of Court and Cause.]

ANSWER

The Commissioner of Internal Revenue, by his attorney, Charles Oliphant, Chief Counsel, Bureau

of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

1 and 2. Admits the allegations contained in paragraphs 1 and 2 of the petition.

3. Admits that the taxes in controversy are estate taxes and that the asserted deficiency is in the amount of \$384,634.05 as alleged in paragraph 3 of the petition and denies the remainder of said paragraph.

4(1) to (15), inclusive. Denies that the respondent erred as alleged in subparagraphs (1) to (15), inclusive, of paragraph 4 of the petition.

5(1)(a). Admits the matter set forth in subparagraph (a) of paragraph 5(1) of the petition except for lack of information sufficient to form a belief as to the truth or falsity thereof it is denied that Myron Selznick, Ltd., a New York corporation, was engaged in the business of acting as agent for actors and directors as alleged in said subparagraph.

(b). Denies the allegations contained in subparagraph (b) of paragraph 5(1) of the petition.

(c). Admits that 100 shares of Myron Selznick, Ltd., were valued at \$12,592.50 in item 22, Schedule B of Form 706 filed by the estate as alleged in subparagraph (c) of paragraph 5(1) of the petition and denies the remainder of said subparagraph.

(d). Admits the allegations contained in subparagraph (d) of paragraph 5(1) of the petition.

5(2)(a). Admits the matter contained in sub-

paragraph (a) of paragraph 5(2) of the petition except for lack of information sufficient to form a belief as to the truth or falsity thereof it is denied that United Studios, Inc., was a Delaware corporation engaged in the business of holding real property and collecting rents therefrom as alleged in said subparagraph.

(b). Denies the allegations contained in subparagraph (b) of paragraph 5(2) of the petition.

(c.) Admits that 1,000 shares of United Studios, Inc., were valued at \$6,000 in item 25 of Schedule B of Form 706 filed by the estate as alleged in subparagraph (c) of paragraph 5(2) of the petition and denies the remainder of said subparagraph.

(d). Admits the allegations contained in subparagraph (d) of paragraph 5(2) of the petition.

5(3)(a) and (b). Admits the allegations contained in subparagraphs (a) and (b) of paragraph 5(3) of the petition.

(c). Denies the allegations contained in subparagraph (c) of paragraph 5(3) of the petition.

(d). Admits that \$79,390.42 on account of said commissions was reported in item 54, Schedule F of Form 706 filed by the estate as alleged in subparagraph (d) of paragraph 5(3) of the petition and denies the remainder of said subparagraph.

(e). Admits the allegations contained in subparagraph (e) of paragraph 5(3) of the petition.

5(4) (a) to (d), inclusive. Denies the allegations contained in subparagraphs (a) to (d), inclusive, of paragraph 5(4) of the petition.

(e) Admits that \$2,186.67 was reported in item

55 of Schedule F of Form 706 filed by the estate as alleged in subparagraph (e) of paragraph 5(4) of the petition and denies the remainder of said subparagraph.

(f). Admits the allegations contained in subparagraph (f) of paragraph 5(4) of the petition.

5(5)(a) to (d), inclusive. Denies the allegations contained in subparagraphs (a) to (d), inclusive, of paragraph 5(5) of the petition.

(e). Admits the allegations contained in subparagraph (e) of paragraph 5(5) of the petition.

5(6)(a). Admits the allegations contained in subparagraph (a) of paragraph 5(6) of the petition.

(b). Denies the allegations contained in subparagraph (b) of paragraph 5(6) of the petition.

(c). Admits the allegations contained in subparagraph (c) of paragraph 5(6) of the petition.

(d). Denies the allegations contained in subparagraph (d) of paragraph 5(6) of the petition.

(e). Admits the allegations contained in subparagraph (e) of paragraph 5(6) of the petition.

5(7)(a) and (b). Denies the allegations contained in subparagraphs (a) and (b) of paragraph 5(7) of the petition.

(c). Admits the allegations contained in subparagraph (c) of paragraph 5(7) of the petition.

(d). Denies the allegations contained in subparagraph (d) of paragraph 5(7) of the petition.

(e). Admits that as of the date of decedent's death no amount had been collected on account of the sums advanced to Mrs. Donat as alleged in subpara-

graph (e) of paragraph 5(7) of the petition and denies the remainder of said subparagraph.

(f) and (g). Denies the allegations contained in subparagraphs (f) and (g) of paragraph 5(7) of the petition.

(h). Admits the allegations contained in subparagraph (h) of paragraph 5(7) of the petition.

5(8)(a). Admits the allegations contained in subparagraph (a) of paragraph 5(8) of the petition.

(b). Admits the matter set forth in subparagraph (b) of paragraph 5(8) of the petition except the qualification "prior to June 6, 1932," which is denied.

(c) and (d). Denies the allegations contained in subparagraphs (c) and (d) of paragraph 5(8) of the petition.

(e). Admits the matter set forth in subparagraph (e) of paragraph 5(8) of the petition except the qualification "after June 6, 1932," which is denied.

(f). Denies the allegations contained in subparagraph (f) of paragraph 5(8) of the petition.

(g). Admits that in his final determination of the asserted deficiency, respondent included in the gross estate of decedent the property having a value as of the date of decedent's death of \$283,769.62 as alleged in subparagraph (g) of paragraph 5(8) of the petition and denies the remainder of said subparagraph.

5(9)(a). Admits the allegations contained in subparagraph (a) of paragraph 5(9) of the petition.

(b) Admits the matter set forth in subparagraph (b) of paragraph 5(9) of the petition except for lack of information sufficient to form a belief as to the truth or falsity thereof denies that the transfers were made "on or about January 29, 1932," as alleged in said subparagraph.

(c) to (f), inclusive. Denies the allegations contained in subparagraphs (c) to (f), inclusive, of paragraph 5(9) of the petition.

(g). Admits that \$39,407.58 was reported as insurance includible in the estate in Schedule G of Form 706 filed by the estate as alleged in subparagraph (g) of paragraph 5(9) of the petition and denies the remainder of said subparagraph.

(h). Denies the allegations contained in subparagraph (h) of paragraph 5(9) of the petition.

(i). Admits that in his final determination of the asserted deficiency, respondent included in the gross estate of decedent \$188,275.31 on account of said insurance as alleged in subparagraph (i) of paragraph 5(9) of the petition and denies the remainder of said subparagraph.

5(10)(a) to (h), inclusive. Denies the allegations contained in subparagraphs (a) to (h), inclusive, of paragraph 5(10) of the petition.

(i). Admits the allegations contained in subparagraph (i) of paragraph 5(10) of the petition.

5(11)(a) to (e), inclusive. Denies the allegations contained in subparagraphs (a) to (e), inclusive, of paragraph 5(11) of the petition.

(f). Admits the allegations contained in subparagraph (f) of paragraph 5(11) of the petition.

5(12), (13) and (14). Denies the allegations contained in paragraphs 5(12), (13) and (14) of the petition.

5(15). Admits the allegations contained in paragraph 5(15) of the petition.

6. Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

/s/ CHARLES OLIPHANT,

Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

B. H. NEBLETT,

Division Counsel.

E. A. TONJES,

H. A. MELVILLE,

Special Attorneys, Bureau of
Internal Revenue.

Received and filed Aug. 19, 1947, T.C.U.S.

[Title of Court and Cause.]

STIPULATION

It is hereby stipulated and agreed by the parties to the above-entitled proceeding by their respective counsel, as follows:

A. Stipulations Concerning Agreed Portions of the Case

As set forth below, the parties hereto have stipu-

lated with respect to disposition of the issues set forth in the Petition as paragraph 4, subparagraphs (1), (2), (3), (4), (5), (6), (7), (10), (11), (12), (13) and (14). These are set forth below in paragraphs numbered to correspond with said subparagraphs of paragraph 4 of the Petition, the stipulations and agreements of the parties with respect to these issues.

It is hereby stipulated and agreed that the Court may find as follows:

(1) The value of 100 shares owned by decedent of capital stock of Myron Selznick, Ltd., a New York corporation, was \$26,000 on the date of death of the decedent.

(2) The value of 1000 shares owned by the decedent of capital stock of United Studios, Inc., a Delaware corporation, was \$6,800 on the date of decedent's death.

(3) The value of commissions payable by clients whom decedent represented as agent, referred to as Item 54 in the statement accompanying the 90-Day Letter, on the date of decedent's death was \$137,774.

(4) The value of the claim of decedent for commissions receivable under a contract between Myron Selznick and Myron Selznick, Inc., parties of the first part, and Leland Hayward, Leland Hayward, Inc., Leland Hayward Co., Ltd., Leeward Royalties, Inc., Nat Deverich and Hayward-Deverich, parties of the second part, referred to as Item 55 in the 90-Day Letter, was \$5,890.72 on the date of decedent's death.

(5) The value of the claim of decedent for commissions under an agency contract with Hunt Stromberg, was \$20,000 on the date of decedent's death.

(6) The value of a claim of decedent against Marguerite Roberts for commissions was \$3,250 on the date of decedent's death.

(7) A claim of decedent against Robert Donat for moneys advanced, on the date of decedent's death had no value.

(10) A claim of Florence A. Selznick against the decedent's estate in the amount of \$14,535.01 is not an allowable deduction for Federal estate tax purposes.

(11) A claim of Mildred Selznick against the decedent's estate in the amount of \$27,575 is allowable as a deduction for Federal estate tax purposes in the amount of \$20,681.

(12) and (13) Federal and State income taxes and State property taxes and interest thereon accrued prior to the date of decedent's death, and administration expenses incurred by the estate, not claimed in the estate tax return nor allowed in the 90-Day Letter, are properly deductible in an amount of \$33,589.79. In addition, if the following circumstances occur, further fees of counsel in the proceeding shall be allowed as an additional deduction, as follows:

If an appeal from this proceeding to the Ninth Circuit Court of Appeals is taken by either party hereto, an additional deduction for such fees of \$3,500 shall be allowed, upon proof of payment of same.

If either party thereafter applies for a writ of certiorari to the Supreme Court of the United States, a further deduction for such fees of \$1,000 shall be allowed, upon proof of payment of same.

If such a writ of certiorari is granted, a further deduction for such fees of \$2,500 shall be allowed, upon proof of payment of same.

Also with respect to this proceeding, the Petitioner has incurred or will incur other costs and expenses and the amount thereof (not exceeding a reasonable amount), if properly established by the Petitioner, will be allowed as a deduction in any computation made herein pursuant to Rule 50.

(14) Under the provisions of Section 813(b) of the Internal Revenue Code, as amended by Section 403 of the Revenue Act of 1939, and limited by Section 936(a) of the Internal Revenue Code, a credit for state inheritance taxes in the amount provided for by law shall be allowed to the petitioner any time prior to sixty days after the decision of The Tax Court herein becomes final, if proof of payment is established in accordance with the provisions of Section 81.9 of Regulations 105.

B. Stipulation of Facts with Respect to Issues 8 and 9 as to Which the Parties Are Still in Dispute.

The parties hereby submit to the Court for its decision the issues set forth in subparagraphs (8) and (9) of paragraph 4 of the Petition. It is hereby stipulated and agreed that all of the facts relevant to said issues are as follows:

1. On January 29, 1932, the decedent executed a Declaration of Trust naming the Citizens National Trust and Savings Bank of Los Angeles as trustee and said Bank accepted said trust, referring to it as Trust Number 6969. A copy of said Declaration of Trust is attached hereto as Exhibit 1-A.

2. The decedent transferred assets to said trust as follows:

a. On January 29, 1932, decedent transferred to the trust, assets (other than life insurance contracts) having a value on the date of decedent's death of \$152,951.83. After June 6, 1932, decedent transferred to said trust, assets (other than life insurance contracts) having a value on the date of decedent's death of \$130,817.79, which amount, it is stipulated and agreed, in any event is properly includible in decedent's gross estate (and which represents \$28.81 more than the amount reported in the estate tax return on account of such assets).

b. Decedent also transferred to said trust, life insurance contracts owned by him, copies of which are filed herewith as Exhibits, as follows:

Policy Number	Name of Issuing Insurance Company	Amount of Policy	Exhibit Number
4,330,590	Mutual Life Insurance Company.....	\$25,000	2-B
10,484,859	New York Life Insurance Company..	\$25,000	3-C
10,484,860	New York Life Insurance Company..	\$25,000	4-D
10,541,918	New York Life Insurance Company..	\$50,000	5-E
62,036	Peoples Life Insurance Company.....	\$25,000	6-F
63,287	Peoples Life Insurance Company.....	\$ 5,000	7-G
108328-R	Indianapolis Life Insurance Co.....	\$10,000	8-H
102,324	Indianapolis Life Insurance Co.....	\$10,000	9-I
109,395	Indianapolis Life Insurance Co.....	\$ 5,000	10-J

Attached to said life insurance contracts included in the aforesaid exhibits are true copies of instruments

of assignment executed by decedent on the dates shown on said instruments and delivered by decedent to said trustee on said dates. The total proceeds of said life insurance contracts, as of the date of decedent's death, were \$188,275.31, of which the portion allocable to premiums paid prior to January 10, 1941, was \$148,805.10, and the portion allocable to premiums paid after said date was \$39,470.21, which latter sum, it is stipulated and agreed, is in any event, includible in decedent's gross estate (and which represent \$62.63 more than the amount reported in the estate tax return on account of said insurance).

3. As set forth in the Declaration of Trust (Exhibit 1-A, Article VII), the net income of said trust was to be paid to Myron Selznick. Attached hereto as Exhibit 11-K is a statement showing the dates and amounts of all payments made by the trustee under said trust to Myron Selznick, from the date of creation of the trust to the date of decedent's death. On the date of decedent's death there were \$1138.36 of income of said trust on hand with said trustee which had accrued and which had not been distributed to the decedent.

4. It is hereby stipulated and agreed that, depending upon the Court's decision with respect to the trust, as shown below, the amounts includible in gross estate on account thereof will be as follows:

a. If the Court finds that neither the non-insurance assets nor the life insurance contracts transferred to the trust prior to June 6, 1932, are

includible in gross estate, the amount includible in gross estate on account of said trust is \$170,288 (which is \$91.44 more than the amount included on account thereof in the estate tax return).

b. If the Court finds that the non-insurance assets transferred to the trust prior to June 6, 1932, are not includible in gross estate but that the life insurance contracts transferred to the trust prior to June 6, 1932, are includible in gross estate, then the amount includible in gross estate on account of said trust is \$319,093.10.

c. If the Court finds that all of the assets transferred by decedent to said trust (including both non-insurance assets and insurance contracts) are includible in gross estate, the amount includible in gross estate on account thereof is \$472,044.93.

Dated November 29, 1948.

/s/ LUCIEN W. SHAW,

Counsel for Petitioner.

/s/ CHARLES OLIPHANT,

Chief Counsel, Bureau of Internal Revenue, Counsel for Respondent.

Filed Nov. 29, 1948. T.C.U.S.

EXHIBIT 1-A

Citizens National Trust & Savings Bank

Trust No. 6969

Declaration Of Trust

Know All Men By These Presents: That the Citizens National Bank of Los Angeles, a national banking association, with its principal office at Los Angeles, California, hereinafter called Trustee, does hereby admit, certify and declare that Myron Selznick, a resident of Beverly Hills, California, hereinafter called Trustor, has conveyed, transferred and delivered to the said Trustee the sum of One Hundred Thousand and (\$100,000.00) Dollars lawful money of the United States, hereinafter sometimes referred to as "money and/or securities"; that in addition thereto, the said Trustor has assigned to the said Trustee, as Trustee, certain insurance policies, a schedule of which is attached hereto, marked Exhibit "A", and by this reference made a part hereof as if herein fully set forth.

It is agreed that no consideration was given by said Trustee for the delivery to it of said sum of money and/or said securities, and that the same has been so received and accepted by it and will be hereafter held by it in trust, under the terms and conditions set forth in this Declaration, and that the proceeds of any and all of said policies of insurance. (including any other policies upon the life of the Trustor which may or shall be hereafter delivered and made payable to the Trustee), shall be held by the Trustee In An Irrevocable Trust for the follow-

ing uses and purposes, and subject to the conditions and reservations and upon the trusts following, to-wit:

Article I.

It is an express condition of this trust that the Trustee shall not be responsible nor assume any liability for the nature, value or extent of its title to any sum of money, securities or other property accepted In Trust hereunder, or any securities and/or other property that may hereafter be delivered to it and added to this trust, as hereinafter provided, nor for any adverse or conflicting claims of interest therein of other persons, nor for the value, validity or collectibility of any securities or notes or other paper received by it; but that its only liability shall be for such right, title and interest as it may have received or hereafter acquire under any conveyances, assignments and transfers, and for such sums as it may collect from any property received by it.

Article II.

The Trustor agrees that as to the insurance policies delivered to the Trustee or which may hereafter be delivered to it:

To cause each and every policy intended to be made subject to this agreement and the trusts hereunder to be made payable to the Trustee by sufficient designation as beneficiary thereof, or in such other manner as the parties hereto and any insurer shall agree, and the Trustee assumes no responsibility for the sufficiency or effect of any in-

strument or agreement by which any policy shall be made payable to it.

Article III.

Said Trustee is authorized and empowered to retain and hold, subject to the provisions hereof, said sums of money and securities, and also any additional property and/or securities the Trustor may from time to time add to the principal of this trust, at the risk of the trust estate and not at the risk of the Trustee, and without liability for decrease in the value of such property or securities. Said Trustee is hereby given full power of sale and exchange in connection with the property and securities from time to time comprising the principal of this trust, and is authorized and empowered from time to time, subject to the restrictions hereinafter set forth, to invest, reinvest, loan and reloan the proceeds and cash principal in any securities, properties and investments permissible by law for investment of trust funds, and upon such terms and conditions which said Trustee may deem to be for the best interests of this trust; said Trustee to use reasonable precaution to protect all persons interested in this trust from loss by reason of such loans or investments.

During the lifetime of the Trustor, Myron Selznick, no sale or exchange of property which may at any time comprise the principal of the trust estate, and no change in the investments of the principal of the trust estate, shall be made by the

Trustee except on the written order and direction of said Trustor or his duly authorized agent, —, and said Trustor during his lifetime hereby reserves for himself and/or his agent to be designated from time to time, the right to direct, in writing, said Trustee as to the investment of all cash principal, in any securities and/or property whether or not the same may be approved and permissible by law for investment of trust funds under the laws of the State of California. After the death of Trustor said Trustee shall only sell, exchange, invest and reinvest in securities permissible by law for investment of trust funds as above provided upon the written approval of any two of the Trustee, David O. Selznick and Loyd Wright, and upon the death of either the said David O. Selznick or Loyd Wright, then upon the approval of the survivor of them; and/or if all of the above named persons should have previously died and/or refused or neglected to act within a reasonable time upon the request of said Trustee, then in the absolute and uncontrolled discretion of said Trustee. The Trustee shall be fully protected in respect of any sales, exchanges, investments and reinvestments as shall be directed by the Trustor and/or the said David O. Selznick and Loyd Wright, and it shall not be liable or responsible in any way for depreciation or loss incurred by reason of any such sales, exchanges, investments or reinvestments. Notwithstanding anything herein to be contrary, said Trustee shall invest neither principal nor income

from the corpus or said trust estate in any securities underwritten by the said Trustee, or in which the said Trustee is directly or indirectly interested. The Trustor hereby reserves the right by written instrument filed with the Trustee, to revoke said appointment of David O. Selznick and/or Loyd Wright, and to substitute other persons to act for and in lieu of David O. Selznick and/or Loyd Wright, in the capacities herein in this paragraph provided for them to act.

Said Trustee may, if it so elects, cause any and all shares of corporate stock, now or that may hereafter become subject to this trust, to be transferred into the name of the Trustee, as Trustee under its Trust No. 6969, and either name the beneficiaries in the corporate certificate and/or furnish said corporation with the names of the beneficiaries and/or a certified copy of the Declaration of Trust; or hold said corporate stock in this trust without transfer into its name, and/or it may hold the same in the name of the Trustor and/or the name of the beneficiaries.

All dividends accruing on shares of the capital stock of any corporation which form a part of the principal of the trust estate and payable in shares of such corporation, shall be deemed principal. Where the Trustee shall have the option of receiving a dividend either in cash or in shares of the declaring corporation, it shall be considered cash dividend and deemed income irrespective of the

choice made by the Trustee. All rights to subscribe to the shares or other securities or obligations of a corporation accruing on account of the ownership of shares in such corporation and the proceeds of any sale of such rights, shall be deemed principal.

Said Trustee is directed to charge all premiums on investments and to credit all discounts on investments against or to principal, as the case may be, and not against or to income. In all other cases said Trustee is hereby vested with absolute and uncontrolled discretion and power to determine what shall constitute principal of the trust estate or the gross income therefrom, or net income available for distribution under the terms of this trust; and it may also, at its discretion, and subject to first obtaining the consent of the Trustor, if living, and the said David O. Selznick and Loyd Wright, if Trustor be dead, or if they be dead, then in its discretion alone, improve any real property subject to this trust, build, alter, or repair any improvements thereon, of such character, amount, cost, and from such funds or property subject to this trust as it may deem advisable.

Said Trustee may loan or advance its own funds to the trust estate, for any trust purpose, at prevailing rates of interest, which loan or advancement shall thereupon become a first lien on the entire trust estate as to both principal and income and be repaid to said Trustee before any other payments or distributions herein provided for shall be made.

Article IV.

If the Trustee hereunder shall resign under the right so to do which it hereby expressly reserves for itself and its successor or successors in office, the successor Trustee shall be appointed by any court of competent jurisdiction in the County of Los Angeles, California, acting upon or in response to the petition of the resigning Trustee and/or the Trustor, if living, and/or any beneficiary.

Article V.

The trusts hereunder created and declared shall be subject to the following conditions and agreements:

(a) To the extent that it shall be deemed necessary by the Trustee to disclose the contents of this agreement to any insurance or other company or companies for any purpose of the trust, or in the event of any proceedings in any court of competent jurisdiction to enforce any of the provisions of this agreement or to appoint another Trustee, or in any controversy effecting this trust, the Trustor waives the provisions of Section 103 of the Bank Act of the State of California and any similar laws hereafter enacted or declared.

(b) If any provision of this agreement shall be found invalid, such invalidity shall be without effect upon any of the other provisions hereof, and each and every valid provision and agreement hereunder shall be deemed separate and distinct from any invalid provision.

(c) Any tax arising from the transfer, vesting or

passing of any interest in the trust estate shall be paid out of the principal of the taxable share or interest. All other taxes payable shall be paid out of principal and charged by the Trustee as in its discretion it deems fair and equitable.

(d) Whenever the trust estate or any portion thereof shall be distributable, the Trustee, in its discretion, may transfer and deliver to any beneficiary in the form in which then held in trust estate, securities and investments at the then fair market value thereof equivalent in amount to the distributable share or interest, or may convert the trust estate or any part thereof into cash for distribution.

(e) In all matters of interpretation, whenever necessary to give effect to any provision of this agreement, the masculine shall include the feminine and the singular shall include the plural.

(f) This trust has been created, declared and accepted by the Trustee in the State of California and shall be interpreted and enforced in accordance with the laws of said State.

(g) The terms "policy" and "policy of life insurance," whenever used in this agreement, shall include all forms of insurance upon the life of the Trustor, including accident insurance payable in the event of his death.

(h) Each and every beneficiary of the trusts hereunder created and declared, including the Trustor, shall have no right, title or authority to assign, transfer, hypothecate or otherwise antici-

pate, impair, or encumber his or her beneficial and/or legal interest in the trust estate, and no instrument of attempted assignment, transfer, or hypothecation thereof shall be effective for any purpose whatsoever, and neither the principal nor the income of the trust estate, nor any part thereof, shall be liable for the debts of any beneficiary nor be subject to attachment, execution or other process of any court.

(i) It is agreed that the Trustee shall not be responsible for any act or omission hereunder unless same constitutes gross negligence, nor shall it be required to bring or defend suit hereunder, unless indemnified to its own satisfaction.

(j) It shall be the duty of every beneficiary to whom the Trustee is directed to make payment or distribution of any kind hereunder to notify the Trustee of the happening of the event or events by which such beneficiary becomes entitled to receive same and to furnish reasonable proof thereof.

(k) The Trustor warrants, represents and states that he is solvent and that there are no judgments against him, and that he has created this irrevocable trust without intent to hinder, delay or defraud any creditor; that, in so far as the provisions hereof may provide that the income shall be payable to the Trustor, he shall, for the purposes of the provisions of this Declaration of Trust and as to said income, be deemed and construed a beneficiary.

Article VI.

From the gross income derived from the trust

estate or from the principal thereof, if the income is insufficient, the Trustee shall first pay and discharge, as and when due, any and all taxes, assessments, advancements and other expenses of every kind and nature expended or incurred in the management and protection of the trust estate and of this trust, and the payment when due of any and all income taxes, inheritance taxes and estate taxes levied or assessed upon the trust estate and/or the beneficiaries hereunder or the income therefrom, and shall, after sufficient cash or other securities have been deposited in this trust so that the income therefrom shall be sufficient, (until such time the Trustor agrees to pay said premiums himself), also pay any and all premiums on life insurance policies and/or contracts which may be transferred and/or delivered by the Trustor to the Trustee pursuant to the terms hereof, and also pay to itself a compensation for its own services as Trustee, as follows:

(a) A sum equal to one-tenth of one per cent ($1/10$ th of 1%) of the reasonable value of the trust estate for the acceptance of this Declaration of Trust and other instruments in relation hereto, and a like sum for any additions that may be hereafter made to the principal of this trust. Minimum fee Twenty-Five Dollars (\$25.00).

(b) An annual compensation, payable quarterly, equal to three-fifths of one per cent ($3/5$ of 1%) of the reasonable value of the principal of the trust estate, for its ordinary and usual duties as said Trustee.

(c) A sum equal to one per cent (1%) of the reasonable value of the principal of the trust estate for the termination, distribution, closing and settlement of this trust according to the terms hereof.

(d) A reasonable compensation for any unusual or extraordinary services rendered by it as Trustee hereunder, to be fixed by court.

Article VII.

This Trust is irrevocable. The entire net income received and derived from the trust estate and available for distribution hereunder shall be by said Trustee paid monthly or in other convenient installments as directed by the Trustor to Myron Selznick for and during his lifetime; the said Myron Selznick, however, reserves the right to direct the Trustee from time to time to credit, keep and add any and all income which, pursuant to the terms hereof, may be payable to him, to the principal of the corpus of the trust estate, by giving written instructions from time to time so demanding.

Article VIII.

From and after the death of the said Myron Selznick, the entire net income received or derived from the trust estate and available for distribution hereunder shall go and be paid by said Trustee in equal monthly installments, as follows:

(a) So long as the net distributable income received from the corpus of the trust estate does not exceed Fifteen Thousand (\$15,000.00) Dollars per annum, the net income shall be distributed:

1. One-half ($\frac{1}{2}$) of the net income shall be payable to the widow of the Trustor, if living, and to the issue of the body of the Trustor surviving, share and share alike. In this connection, the natural guardian surviving of the issue of the body of the Trustor shall, during the minority of any such issue, receive the share herein provided to be paid such issue during his or her minority.

2. Of the remaining one-half ($\frac{1}{2}$) of the net income, for and during the lifetime of the mother and father of the Trustor, Fifty Per cent (50%) of said remaining one-half shall be payable in monthly installments to each of L. J. Selznick, the father of Trustor, and Florence A. Selznick, the mother of Trustor, and upon the death of either of them the survivor of the said father and mother of the Trustor shall receive, during his or her lifetime, all of the one-half of the net income herein in the sub-paragraph 2 referred to. The Trustor has left no provision herein for his brother David, or his brother Howard and his family, during the life of either his father and/or mother, for the reason that he has full faith and confidence in the fact that his mother and father will should necessity require, as they have always done, amply provide for the said David and the said Howard and his family, from the moneys they receive from this trust.

Upon the death of the last survivor of the said mother and father of the Trustor, the remaining one-half of the net income referred to in this sub-paragraph 2, shall be divided as follows:

Fifty (50%) Per Cent thereof to David O. Selznick, brother of Trustor, and the remaining fifty (50%) per cent to Howard Selznick, the brother of Trustor, and the children of Howard Selznick, share and share alike, subject to the following conditions: As to Howard Selznick, as long as he shall live, and to the children of Howard Selznick as long as each shall remain single, during the life of this trust. Upon any child of Howard Selznick marrying, then such child shall be entitled to receive his or her share of said income for one year thereafter. After the expiration of one year from the date of such child's marriage, he or she shall have no further interest in the income, as provided in this paragraph. The share of the net income to be payable to the surviving children of the said Howard Selznick shall, during their minority, at all times be payable to the guardian of the estate of each of said children. When and as each of the children of said Howard Selznick marry, she or he shall be paid by the Trustee Twenty Five Hundred (\$2,500.00) Dollars, from the principal of the corpus of the trust estate, which shall be charged against that portion of the principal from which the said Howard Selznick and his children receive their share of the net income of the corpus of the trust estate. (In this connection, Trustor states that his brother Howard, at the date of the execution of this trust, has two children, Ruth Selznick and Florence Selznick, nieces of the Trustor. He intends to make provisions and has drawn this instrument

in contemplation of the fact that said Howard Selznick may have other issue of his body.) Upon the death of the said Howard Selznick, or any of his children, the income to which the one so deceased would be entitled, if living, shall, during the lifetime of the survivor or survivors, (subject to the qualifications hereinafter set forth), be paid to such survivor or survivors. In this connection, notwithstanding anything herein in this document to the contrary, the children of the said Howard Selznick, upon marriage, shall be entitled to receive their share of the income herein provided to be paid them, for one year after his or her marriage only, and upon the termination of said one year period, that portion otherwise payable to such child as shall have married, shall be distributed to the said Howard Selznick and the other of his children who may then survive and be unmarried, and upon the expiration of the said one year period for the last of said children of Howard Selznick who may marry, and upon the death of the said Howard Selznick, or upon the death of the last survivor of the said Howard Selznick and his children should they not marry, or any of them not marry, the income herein provided to be paid to the said Howard Selznick and/or his children shall be paid to the widow of the Trustor, if she survives; if not, to the daughter of the Trustor, Joan Selznick, and/or if he leaves more than one issue of his body, to his issue, (including Joan Selznick), share and share alike.

Upon the death of the said David O. Selznick, that portion of the net income hereinbefore provided to be paid to him shall likewise be payable to the said wife of the Trustor, and if she does not survive the said David O. Selznick, then to the child or children of the said Trustor, share and share alike, if there be more than one.

Upon and after the death of the widow of the Trustor, if she survives him, and/or if she predeceases Trustor, then upon the Trustor's death, one-half ($\frac{1}{2}$) of the net income of the corpus of the trust estate (and balance of income of the corpus of the trust estate if she then be receiving or be entitled to the same pursuant to the terms hereof), shall be payable to Joan Selznick, daughter of the Trustor, or, if there be more than one issue of the body of the Trustor surviving, then to his issue share and share alike, until the death of the last survivor of David O. Selznick, Howard Selznick, L. J. Selznick, Florence A. Selznick, Ruth Selznick, and Florence Selznick, and upon the death of the last survivor of them the trust shall cease and determine and the principal and undistributed income shall be payable as follows:

(a) To the issue of the body of Myron Selznick, Trustor, share and share alike, and to the children of any deceased issue per stirpes and by the right of representation.

(b) If there be no such issue as referred to in the foregoing sub-paragraph 2, to the following named charitable institutions, to-wit: Los Angeles Orthopedic Hospital for Children.

The Trustor reserves the right to change or substitute, from time to time, the said charitable institutions, by giving notice of such change or substitution to the Trustee in writing.

Notwithstanding anything herein to the contrary, if and in the event the said Trustor dies without leaving surviving a widow, and in the event Joan Selznick and any other issue of the body of Myron Selznick shall predecease David O. Selznick and/or Howard Selznick and/or Ruth and Florence Selznick, and the said Joan or other issue of Myron Selznick leave no issue, then the net income derived from the said trust estate shall be distributed and paid as follows:

(a) The whole of the net income shall be payable to L. J. Selznick and Florence A. Selznick, share and share alike, or the survivor of them, during their lifetime.

(b) Upon their death, and so long as David O. Selznick survives, Fifty (\$50.00) Dollars per week to each of said Howard Selznick and his children, share and share alike, and the balance and remainder to David O. Selznick.

(c) Upon the death of Howard, if David survives, Fifty (\$50.00) Dollars per week to each of the surviving children of Howard Selznick, during their lifetime, subject to the qualification, however, that if any of the children of Howard Selznick shall marry, then the share of the income received by said child or children as does marry shall only last for a period of one year after his or her marriage, and thereafter the portion of the income to which such child or children would otherwise have been entitled shall go to David O. Selznick, and provided further, that the balance and remainder of such net income, after deducting the Fifty (\$50.00) Dollar payments to Howard and the survivors of his children, subject to the foregoing qualifications, shall likewise go and be paid to David O. Selznick, so long as he survives them.

(d) If David O. Selznick predeceases them, the net income shall be payable to the said Howard and/or his children, or the survivor of them, share and share alike, during their lifetime, and upon the death of the last of the survivor of Howard Selznick and his children the trust shall cease and determine and the principal and undistributed income of the trust estate shall be made payable and shall by the Trustee be transferred, set aside, and conveyed to the following named charitable institutions, to-wit: Los Angeles Orthopedic Hospital for Children.

The Trustor reserves the right to change or substitute, from time to time, the said charitable insti-

tutions, by giving notice of such change or substitution to the Trustee in writing.

Notwithstanding anything herein to the contrary, if and in the event the net income from said trust estate exceeds an average of Fifteen Thousand (\$15,000.00) Dollars per year, but does not exceed Thirty Thousand (\$30,000.00) Dollars average net income per year, then and in such event only, the foregoing provisions shall be changed in the following particulars, and in no others, to-wit:

The children of Howard Selznick shall each receive upon their marriage Five Thousand (\$5,000.00) Dollars instead and in lieu of Twenty Five Hundred (\$2,500.00) Dollars each, and they shall receive Fifty (\$50.00) Dollars per week in lieu of the net income hereinbefore provided for them, and under such circumstances and at the times only when they are hereinbefore provided to receive their portion of said net income. Notwithstanding anything herein to the contrary, the surplus over and above an average annual income of Thirty Thousand (\$30,000.00) Dollars per annum derived from said trust estate and all such surplus shall be payable as follows:

(a) To the widow of the Trustor, during her lifetime.

(b) Upon her death, to Joan Selznick, if she survives, and other issue of the body of Myron Selznick, if any there be and if any survive, share and share alike, or to the issue of such child by right of representation.

(c) If there be no widow of the Trustor surviving and all issue of the Trustor shall die without leaving issue, then said surplus shall be paid to L. J. Selznick and Florence A. Selznick, father and mother, respectively, of the Trustor, if living, or to the survivor of them, and thereafter to the brother David O. Selznick, if living, and upon his death shall be accumulated and added to the principal of the trust estate.

Article IX.

Notwithstanding anything herein to the contrary, it is the intention, desire, and the Trustor hereby directs, that if and in the event, and under any circumstance, his legal wife survives him as his widow, and after his death she should remarry, then any and all income herein provided to be paid her shall be divided and she shall receive one-half ($\frac{1}{2}$) only, of the moneys, (either income or principal), when and as, pursuant to the terms hereof, she is entitled to receive the same, and the remaining one-half of such principal and/or income hereinbefore provided to be paid her shall be paid and/or distributed in the same manner as is hereinbefore provided in the event the wife of the Trustor shall have predeceased the Trustor.

Article X.

The Trustor declares that he is married; that his wife's name is Marjorie Daw Selznick; that there is at the time of executing this irrevocable Declaration of Trust, one issue of said marriage, Joan

Selznick. Trustor wishes to provide, however, and makes this Declaration of Trust in contemplation of the fact that there may be more than one issue of his body, and for that reason has throughout this instrument made provision for the said Joan's share of her interest herein with any other issue of his body, share and share alike.

Article XI.

Notwithstanding the fact that this Declaration of Trust is irrevocable, the Trustor, for himself and on behalf of the beneficiaries, reserves the right to petition any court of competent jurisdiction at any time and from time to time to amend and/or construe the same; provided, however, that no amendment shall change the provisions of this trust which shall have the effect or which is intended to or shall cause the same to be construed to be or amend it to be a revocable trust rather than an irrevocable one.

The Trustor reserves the absolute right to cancel or cause to be cancelled, and revoke or cause to be revoked, any of the insurance policies herein referred to, or which may hereafter be added to this Trust, provided that he first obtain the written consent of any two of the following, to-wit: The Trustee, David O. Selznick and Loyd Wright; provided further, that upon any cancellation any cash surrender values received on any such policies, shall remain in and/or be added to the corpus of this Trust.

Article XII.

Notwithstanding anything herein to the contrary, this trust shall terminate upon the death of the last survivor of the Trustor, Marjorie Daw Selznick, Joan Selznick, David O. Selznick, Howard Selznick, L. J. Selznick, father of the Trustor, Florence A. Selznick, mother of the Trustor, and Ruth and Florence Selznick, nieces of the Trustor, all of whom are now living, and the trust estate distributed as hereinbefore provided.

Article XIII.

Any income accrued or undistributed at the termination of any trust or estate hereunder, shall belong and go to the beneficiary or beneficiaries entitled to the next eventual estate, in the same proportions as the principal hereof, provided, however, that it is an express condition of the trust herein created, which shall take precedence over any and all other provisions herein relative to the distribution of the trust estate, that the Trustee is authorized and empowered and may in its sole and absolute discretion, although it is not obligated so to do, from the net income and/or principal of the trust estate and in such manner as to it may seem equitable and just, pay a reasonable sum toward defraying either in whole or in part the expenses of the last illness and of the funeral of the Trustor and/or any specifically named or contingent beneficiary or beneficiaries under said Trust.

Article XIV.

Wherever in this agreement it is provided that the Trustee shall cease making payments to any beneficiary upon the happening of any contingency, such as marriage or otherwise, it shall not be bound or responsible by making payment pursuant to the terms of this trust to any beneficiary or other person interested in this trust, until notified in writing and due proof satisfactory to the Trustee, of the happening of such contingency as pursuant to the terms hereof operates to change the payments theretofore in effect.

In Witness Whereof, said Citizens National Trust & Savings Bank of Los Angeles, as Trustee, has caused its corporate name to be subscribed and its corporate seal to be affixed hereunto by its Vice-President and Assistant Trust Officer thereunto duly authorized, this 29 day of January, 1932, at Los Angeles, California.

CITIZENS NATIONAL TRUST
& SAVINGS BANK OF LOS
ANGELES, as Trustee,
By HALCOTT B. THOMAS,
Vice-President.
VICTOR T. JOHNSON,
Assistant Trust Officer.

I, the Undersigned, Myron Selznick, hereby certify that I am the person named in the above and foregoing Declaration of Trust, and therein called Trustor; that I fully understand that this Declara-

tion of Trust is irrevocable; that said Declaration of Trust fully and accurately sets out the terms and trusts under and upon which the property therein mentioned is to be held, managed and disposed of by the Trustee therein named, and I do hereby agree, consent to, approve, ratify and confirm the same in all particulars.

Dated at Los Angeles, California, this 29 day of January, 1932.

MYRON SELZNICK,
Trustor.

I, the Undersigned, Marjorie Daw Selznick, wife of Myron Selznick, the Trustor in the above and foregoing Declaration of Trust, having read said Declaration of Trust in its entirety and clearly understanding the same, do hereby accept the terms and provisions of said trust, and I do hereby ratify, approve and confirm the same, and that I, by this instrument, do, pursuant to my right to contract, waive, relinquish and forever quitclaim any and all interest in and to the moneys and securities deposited or hereafter to be deposited by the said Myron Selznick in said Trust, and/or other property or securities, including insurance agreements, premiums paid thereon, as well as the proceeds thereof, when and as collected, and that each, all and every of the moneys, property, securities, insurance policies, and the proceeds thereof, I do hereby declare to be the separate and sole property of Myron Selznick. Nothing herein, however, shall

be constituted as a waiver of any rights which I may have by reason of the terms and conditions of said Trust, if any.

Dated at Los Angeles, California, this 29 day of January, 1932.

MARJORIE DAW SELZNICK.

EXHIBIT "A"

No. 192324

The Indianapolis Life Insurance
Company of Indianapolis, Indiana \$10,000.00

No. 62036

Peoples Life Insurance Company.. 25,000.00

No. 63287

Peoples Life Insurance Company.. 5,000.00

No. 10484859

New York Life Insurance Company 25,000.00

No. 10484860

New York Life Insurance Company 25,000.00

No. 4330590

The Mutual Life Insurance Com-
pany of New York 25,000.00

No. 10541918

New York Life Insurance Company 50,000.00

Policies taken out since the above exhibit was
made out

No. 109395

The Indianapolis Life Insurance
Company of Indianapolis, Indiana 5,000.00

No. 108328-R

The Indianapolis Life Insurance
Company of Indianapolis, Indiana 10,000.00

EXHIBIT 11-K

Statement of Payments of Net Income to Myron Selznick from Trust Number 6969, made by Citizens National Trust and Savings Bank of Los Angeles as Trustee.

Date	Amount of Payment
July 1, 1932	\$ 431.34
January 11, 1933	1589.04
April 10, 1933	1624.21
September 2, 1933	811.03
December 5, 1933	819.47
January 2, 1934	146.97
April 6, 1934	2410.62
August 16, 1934	1422.41
September 5, 1934	1334.95
November 2, 1934	1262.59
December 2, 1934	459.22
February 1, 1935	2448.77
March 4, 1935	716.00
May 2, 1935	1879.53
August 7, 1935	2376.99
September 4, 1935	544.65
November 4, 1935	436.68
December 4, 1935	1571.99
January 4, 1936	23.98
February 4, 1936	714.90
May 2, 1936	480.00
June 2, 1936	100.00
July 3, 1936	1357.59
August 3, 1936	3244.81

September 3, 1936	500.00
September 21, 1936	71.53
October 7, 1936	1212.46
November 6, 1936	457.40
January 9, 1937	3626.45
February 5, 1937	3700.93
March 3, 1937	30.17
May 5, 1937	2556.27
July 6, 1937	153.07
August 6, 1937	6840.00
September 3, 1937	10010.00
April 11, 1940	20678.36
June 5, 1940	745.04
November 8, 1940	700.00
March 18, 1942	1000.00

The Tax Court of the United States

Docket No. 14985

ESTATE OF MYRON SELZNICK, Deceased,
BANK OF AMERICA NATIONAL TRUST
AND SAVINGS ASSOCIATION, DAVID O.
SELZNICK and CHARLES H. SACHS, Ex-
ecutors,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Held, property transferred to a trust under which
the life estate in the income was reserved to
the donor is includible in the gross estate of
deceased donor under section 811 (c), I.R.C.
Francois L. Church, . . . U.S. . . . (January 17,
1949).

LUCIEN W. SHAW, ESQ.,
For the Petitioners.

E. A. TONJES, ESQ.,
For the respondent.

MEMORANDUM OPINION

Van Fossan, Judge.

The respondent determined a deficiency in estate
tax of \$384,634.05 consequent upon his holding,
inter alia, that property transferred to a certain
trust should be included in the gross estate of de-
cedent, pursuant to section 811 (c), I.R.C.

The parties entered into an extensive stipulation by which numerous issues were disposed of. Such stipulation is incorporated herein by reference and adopted as formal findings of fact. Effect will be given to such stipulations in the recomputation consequent hereon. The following facts were stipulated or appear from the pleadings:

Bank of America National Trust and Savings Association, a national banking association, David O. Selznick and Charles H. Sachs are the duly appointed and acting executors of the last will and testament of Myron Selznick, who died on March 23, 1944.

The Federal estate tax return of the estate of said decedent was duly filed with the collector of internal revenue for the sixth district of California on June 22, 1945, and the sum of \$294,099.92 was paid to said collector on said date as Federal estate tax of said estate.

On January 29, 1932, the decedent executed a Declaration of Trust naming the Citizens National Trust and Savings Bank of Los Angeles as trustee and said bank accepted said trust, referring to it as Trust No. 6969.

Article VII of the trust agreement reads as follows:

This Trust is irrevocable. The entire net income received and derived from the trust estate and available for distribution hereunder shall be by said Trustee paid monthly or in other convenient installments as directed by the Trustor to

Myron Selznick for and during his lifetime; the said Myron Selznick, however, reserves the right to direct the Trustee from time to time to credit, keep and add any and all income which, pursuant to the terms hereof, may be payable to him, to the principal of the corpus of the trust estate, by giving written instructions from time to time so demanding.

Article XI reads as follows:

Notwithstanding the fact that this Declaration of Trust is irrevocable, the Trustor, for himself and on behalf of the beneficiaries, reserves the right to petition any court of competent jurisdiction at any time and from time to time to amend and/or construe the same; provided, however, that no amendment shall change the provisions of this trust which shall have the effect or which is intended to or shall cause the same to be construed to be or amend it to be a revocable trust rather than an irrevocable one.

The Trustor reserves the absolute right to cancel or cause to be cancelled, and revoke or cause to be revoked, any of the insurance policies herein referred to, or which may hereafter be added to this Trust, provided that he first obtain the written consent of any two of the following, to wit: The Trustee, David O. Selznick and Loyd Wright; provided further, that upon any cancellation any cash surrender values received on any such policies, shall remain in and/or be added to the corpus of this Trust.

The decedent transferred assets to said trust as follows:

On January 29, 1932, decedent transferred to the trust, assets (other than life insurance contracts) having a value on the date of decedent's death of \$152,951.83. After June 6, 1932, decedent transferred to said trust, assets (other than life insurance contracts) having a value on the date of decedent's death of \$130,817.79, which amount, it is stipulated and agreed, in any event is properly includible in decedent's gross estate (and which represents \$28.81 more than the amount reported in the estate tax return on account of such assets).

Decedent also transferred to said trust, life insurance contracts owned by him, as follows:

Policy Number 4,330,590, Mutual Life Insurance Company, \$25,000.

Policy Number 10,484,869, New York Life Insurance Company, \$25,000.

Policy Number 10,484,860, New York Life Insurance Company, \$25,000.

Policy Number 10,541,918, New York Life Insurance Company, \$50,000.

Policy Number 62,036, Peoples Life Insurance Company, \$25,000.

Policy Number 63,287 Peoples Life Insurance Company, \$5,000.

Policy Number 108,328-R, Indianapolis Life Insurance Company, \$10,000.

Policy Number 102,324, Indianapolis Life Insurance Company, \$10,000.

Policy Number 109,395, Indianapolis Life Insurance Company, \$5,000.

Attached to the life insurance contracts are true copies of instruments of assignment executed by decedent on the dates shown on such instruments and delivered by him to the trustee on such dates. The total proceeds of said life insurance contracts, as of the date of decedent's death, were \$188,275.31, of which the portion allocable to premiums paid prior to January 10, 1941 was \$148,805.10, and the portion allocable to premiums paid after said date was \$39,470.21, which latter sum, it is stipulated and agreed, is in any event, includible in decedent's gross estate (and which represent \$62.63 more than the amount reported in the estate tax return on account of said insurance).

As set forth in the Declaration of Trust, the net income of said trust was to be paid to Myron Selznick. Attached thereto is a statement showing the dates and amounts of all payments made by the trustee under said trust to Myron Selznick, from the date of creation of the trust to the date of decedent's death. On the date of decedent's death there were \$1,138.36 of income of said trust on hand with said trustee which had accrued and which had not been distributed to the decedent.

It was also stipulated if the Court finds that all of the assets transferred by decedent to said trust (including both non-insurance assets and insurance contracts) are includible in gross estate, the amount includible in gross estate on account thereof is \$472,044.93.

On the above facts and others appearing in the stipulation and exhibits, petitioners on brief contend that none of the assets transferred to the trust should be included in the taxable estate.

The brief was filed but a few days before the Supreme Court rendered its decision in *Commissioner v. Estate of Francois L. Church, Deceased*,—U.S.—(January 17, 1949). In that case the Supreme Court overruled *May v. Heiner*, 281 U.S. 238 and *Hassett v. Welch*, 303 U.S. 303, and ruled on facts closely paralleling in all substantial respects those here present that the reservation of life income is a decisive factor. The Court said:

***We hold that this trust agreement, because it reserved a life income in the trust property, was intended to take effect in possession or enjoyment at the settlor's death and that the Commissioner therefore properly included the value of its corpus in the estate.

No useful purpose will be served by discussion of the various technical and legalistic arguments advanced by petitioners in view of the devastating effect thereon of the Church case. Respondent is affirmed.

Decision will be entered under Rule 50.

Served April 1, 1949.

Entered April 1, 1949.

[Seal T.C.U.S.]

Received March 31, 1949 T.C.U.S.

[Title of Court and Cause.]

MOTION TO WITHDRAW MEMORANDUM
OPINION AND TO PERMIT FILING
OF PETITIONERS' SUPPLEMENTARY
BRIEF

Come now the petitioners by their attorneys Brady & Nossaman and Joseph D. Brady, Walter L. Nossaman and Lucien W. Shaw, and respectfully request that the court enter the following order:

That the memorandum opinion herein entered on April 1, 1949, be withdrawn and that the petitioners' supplementary brief to analyze the Church decision (submitted herewith) be filed.

As their reasons therefor petitioners respectfully represent to the court as follows:

1. Petitioners' Opening Brief was filed on or about January 10, 1949, within the time directed by the court at the trial of the case on November 29, 1948.

2. On February 2, 1949 this Court granted a motion of respondent for extension of time within which to file brief. Included in said motion as one of the grounds therefor was the following statement:

"4. The Supreme Court of the United States in two opinions promulgated January 17, 1949, *Commissioner of Internal Revenue v. Estate of Francois L. Church, Deceased*, Edward E. Black, Executor, and the case of the *Estate of Sidney M.*

Spiegel et al v. Commissioner of Internal Revenue, decided questions which in all probability will have a material bearing on the decision in this proceeding and respondent desires to give the applicability of the decisions in these cases careful consideration, which consideration cannot be given in the time remaining before the due date of the brief."

3. Petitioners therefore assumed that the Church case would be considered in connection herewith and that the appropriate time for petitioners to present to the Court their views thereon would be in petitioners' reply brief to respondent's brief referred to in said motion.

4. Respondent has never filed a brief herein and before petitioners were able to submit a supplementary brief to analyze the Church decision the memorandum opinion herein was received.

5. Petitioners respectfully submit that the decision in the Church case has no application to this case. The reasons for this conclusion are fully set forth in the supplementary brief accompanying this motion. The Court should have the benefit of petitioners' argument on this matter before any decision is entered herein.

Wherefore, it is prayed that the foregoing order be made by the court.

Dated: April 11, 1949.

/s/ JOSEPH D. BRADY,

/s/ WALTER L. NOSSAMAN,

/s/ LUCIEN W. SHAW,

Attorneys for Petitioners.

[United States Tax Court Stamp]: Denied April 14, 1949.

/s/ ERNEST H. VAN FOSSAN,
Judge.

Received and Filed April 13, 1949 T.C.U.S.

[Title of Court and Cause.]

MOTION FOR REVIEW BY THE COURT
OF REPORT OF A DIVISION

To The Presiding Judge Of The Tax Court Of the
United States:

Petitioners respectfully pray that the Presiding Judge exercise the discretion conferred on him by Section 118(b) I.R.C. and direct that the Memorandum Decision entered in the above proceeding on April 1, 1949 be set aside and that the matter be reviewed by the entire court.

The sole issue in this case is whether a trust created January 29, 1932 is includible in gross estate for Federal estate tax purposes. This issue in turn depends upon whether the trust is taxable because the grantor reserved income of the trust for a period ending before his death.

This petition for review is based upon the following grounds:

(1) Petitioners, through no fault of their own, were afforded no opportunity whatsoever to present arguments on the point relied upon as the only

basis for the Memorandum Opinion of the Division, entered April 1, 1949.

(2) The Memorandum Opinion of the Division entered April 1, 1949 is erroneously based solely on the citation of the decision in the Church case (January 17, 1949; 93 Law Ed. Adv. Ops. 310), which case actually has no relationship to this case.

1. Petitioners Given no Opportunity to Present Arguments on Basis of Memorandum Opinion.

In accordance with the order of the Court at the trial, the petitioners' opening brief was filed herein on or about January 10, 1949.

Seven days later, on January 17th, the Supreme Court entered its decision in the Church case. Petitioners were aware that the Church decision might be thought to have some bearing on this case. This was confirmed by respondent's Motion for Extension of Time to File Brief (granted by the Tax Court on February 2, 1949). This Motion was based on the plea that the Church decision just rendered would have some bearing on this case.

Petitioners' counsel promptly analyzed the Church decision. They reached the conclusion that the decision was not applicable and had no bearing upon this case and could not be used as a basis for decision against the petitioners. They even prepared a draft of language for a brief to demonstrate this point long before the decision of the Division herein.

Seeking to conform to orderly judicial procedure, petitioners' counsel believed that the proper time

to present this argument on the Church case was in a reply brief to respondent's brief. At the date of trial the Division had ordered respondent to file a brief and had ordered petitioners to file a reply brief. It seemed presumptuous for petitioners' counsel to file a further interim brief not directed by the Court when there was no need to do so. The petitioners' reply brief was the proper occasion for arguing this point.

Petitioners received no brief of the respondent at the time it was due and attempted, without success, through the Clerk of the Court to find out why.

Petitioners were therefore astounded, shortly after April 1, 1949, to receive the Memorandum Opinion of the Division, deciding the case solely in reliance on the Church decision. The Church decision has nothing to do with this case and petitioners had been ready, able and willing to demonstrate this conclusion for over a month before the Memorandum Opinion was entered. The opportunity to do so was wholly denied to them through some collaboration between the respondent (who apparently knew it was unnecessary for him to file a brief) and the Division which entered this Memorandum Opinion without giving petitioners the normal opportunity to be heard on this question.

Petitioners therefore respectfully urge that they were denied the opportunity to be heard on the point which became the sole basis of the Division's Opinion. This was true though petitioners were

guilty of no fault or negligence whatsoever and merely because they adhered to the orderly procedure of this Court instead of volunteering an interim brief on a question arising after the filing of their opening brief.

Since this issue involves a tax of over \$100,000 plus interest, the petitioners feel that they were thus deprived of a fair hearing on an important matter by this Court.

It is therefore respectfully requested that the Presiding Judge set aside this arbitrary Memorandum Opinion and have this case considered by the entire Court where petitioners' arguments on the sole point relied upon in the Division's Opinion may be examined.

2. Church Case has no Application Herein.

The Memorandum Opinion of the Division, entered April 1, 1949, relies solely upon the citation of the Church case. Neither the facts nor the decision in the Church case have any application herein.

The statute applicable to this case is Section 302(c), as amended by the Joint Resolution of March 3, 1931 (quoted in our opening brief on page 16 and in our supplementary brief on page 3).

As amended by the Joint Resolution of March 3, 1931, the statute provided for taxing a trust created thereafter if the decedent reserved the right to the income for life. Under this 1931 amendment, if it had been applicable, which it was not, the trust in the Church case would have been taxable.

In the trust in the present case decedent reserved to himself the right to income to be “paid monthly or in other convenient installments as directed by the trustor.” (Exhibit 1-A, Article VII, quoted on page 26 of our opening brief.) The trust further provided that the accrued and undistributed income of the trust at decedent’s death should “belong and go to the beneficiary or beneficiaries entitled to the next eventual estate.” (Exhibit 1-A, Article XIII, quoted on page 26 of our opening brief; underscoring supplied.)

Our contention from the beginning of this case has been that this was not a trust with income reserved for life. It was a trust with income reserved for the period ending on the date of the last payment of an installment of income prior to decedent’s death, which is not a right to income for life.

If this had been a trust with income reserved for life, it was unquestionably taxable under the applicable statute—the Joint Resolution of March 3, 1931. There is no question about this—there was no question about it from the beginning of this case and long prior to January 17, 1949, the date of the decision in the Church case.

The Church case involved a trust created in 1924 in which the decedent reserved the net income of the trust “during the term of his natural life.” There was nothing in the Church trust limiting the reservation of income to any period ending before the decedent’s death. The Church trust was created at a time when the statute (section 302 (c) of the

Revenue Act of 1924) provided only for including transfers "intended to take effect in possession or enjoyment at or after his death." The Court, therefore, in the Church case, was holding that under this language the reservation of a full life estate made the trust taxable. If the Church trust had been created after the Joint Resolution of March 3, 1931, it would clearly have been taxable and there would have been no occasion to take the matter to the Supreme Court of the United States.

The Church decision thus merely established the law prior to March 3, 1931 to be the same as it always has been after March 3, 1931, namely, that a trust with full life estate reserved to the grantor is taxable. We have never argued in this case that this was not the law after March 3, 1931.

What we have argued is that the Selznick trust did not create a full life estate. The decedent herein did not retain the right to the income of the trust for life but for a period ending before his death. We have argued and still argue that this prevents the trust from being taxable under a rule of law which taxes only trusts where the right to income is reserved for life. The Church case added nothing to this rule of law in our case, involving a trust after March 3, 1931. Therefore, our argument stands wholly unaffected by the Church case, which merely extended back the rule already applicable to trusts created after March 3, 1931.

The Congress in 1932 made a further change in the statute for the exact purpose of taxing a trust

like the one here involved. (Section 302(c), as amended by the Revenue Act of 1932, effective June 6, 1932.) That this was the exact purpose of the amendment appears from both House and Senate Committee reports. (House of Representatives Report #708, 72d Congress, 1st Session; Senate Report #665, 72d Congress, 1st Session. See, C. B. 1939-1, Part II, at pp. 490 and 532.) These Committee Reports are quoted from in our opening brief, page 29, and in our supplementary brief, page 9. It therefore is clear that such a trust could not be taxed if created before June 6, 1932.

There is nothing in the Church decision to affect the analysis of the facts in this case. The Church case involved a different set of facts. None of the language in the Church opinion deals with taxability where the decedent reserves a right to income for a period ending before his death.

We therefore submit that the Memorandum Opinion is wholly in error in relying upon the Church decision as the basis for a decision herein. That that case has nothing to do with this situation. A decision herein can be based only upon a detailed analysis of the provisions of the trust and the law applicable thereto, as was done in our opening brief.

The reasons why the Church decision is not applicable herein appear more fully in our Supplementary Brief to Analyze Church Decision, filed

with the Court on April 13, 1949, which the Division refused to consider.

It is therefore respectfully urged that the Memorandum Opinion of the Division is in error and that this proceeding should be reviewed by the entire Court.

Dated: April 21, 1949.

/s/ JOSEPH D. BRADY,

/s/ WALTER L. NOSSAMAN,

/s/ LUCIEN W. SHAW,

Attorneys for Petitioners.

[U.S. Tax Court Stamp]: Denied April 27, 1949.

/s/ BOLON B. TURNER,

Presiding Judge.

Received and filed April 25, 1949 T.C.U.S.

[Title of Court and Cause.]

RESPONDENT'S COMPUTATION FOR ENTRY OF DECISION

The attached proposed computation is submitted, on behalf of the respondent, to The Tax Court of the United States, in compliance with its opinion determining the issues in this proceeding.

This computation is submitted in accordance with the opinion of the Court, without prejudice to the respondent's right to contest the correctness of the

decision entered herein by the Court, pursuant to the statutes in such cases made and provided.

/s/ CHARLES OLIPHANT,

Chief Counsel, Bureau of Internal Revenue.

Of Counsel:

B. H. NEBLETT,
DIVISION COUNSEL.

E. C. CROUTER,

E. A. TONJES,

Special Attorneys, Bureau of
Internal Revenue.

Received and filed May 3, 1949 T.C.U.S.

April 22, 1949.

C—TS:PD
LA:BSF

Recomputation Statement

In re: Estate of Myron Selznick, Deceased
Bank of America National Trust and
Savings Association
David O. Selznick and Charles H. Sachs,
Executors
469 North Beverly Drive
Beverly Hills, California

Docket No. 14985

Date of Death: March 23, 1944.

Estate Tax Liability

Tax Liability	Tax Assessed	Deficiency
\$493,942.36	\$294,099.92	\$199,842.44 (*)

The adjustments shown in the attached schedules have been made in accordance with the memorandum opinion of The Tax Court of the United States, entered April 11, 1949, for decision under Rule 50.

(*) In the event that evidence of payment of State inheritance taxes in the amount of \$63,019.78 is filed before the ex-

piration of 60 days after the decision of The Tax Court of the United States becomes final, the deficiency of \$199,842.44 shown above will be reduced to \$136,822.66.

Estate of Myron Selznick

Date of Death: March 23, 1944

Recomputation Statement

Schedule 1

Adjustments to Net Estate

	For Basic Tax	For Addi- tional Tax
Net estate as shown in statutory notice dated March 27, 1947.....	\$1,794,519.34	\$1,834,519.93
Net estate as adjusted.....	1,378,434.18	1,418,434.18
Adjustment (decrease)	\$ 416,085.75	\$ 416,085.75
Reductions in value and increases in deductions:		
(a) Stocks and bonds.....		\$ 19,158.34
(b) Other miscellaneous property		342,656.62
(c) Transfers		None
(d) Debts of decedent.....		20,681.00
(e) Taxes and administration expenses.....		33,589.75
Total		\$416,085.75

Schedule 2

Explanation of Adjustments

	Value deter- mined in statutory notice	Revised determination
(a) Stocks and Bonds:		
(1) Item 22	\$ 39,958.34	\$ 26,000.00
(2) Item 25	12,000.00	6,800.00
Total	\$ 51,958.34	\$ 32,800.00
Difference (decrease)		\$ 19,158.34

Schedule 2 (Continued)

Estate of Myron Selznick
Date of Death: March 23, 1944

Recomputation Statement

	Value deter- mined in statutory notice	Revised determination
(b) Other Miscellaneous Property:		
(3) Item 54	\$ 271,590.21	\$ 137,774.00
(4) Item 55	9,594.77	5,890.72
(5) Item 59	200,000.00	20,000.00
(6) Item 64 (settlement with M. Roberts)	6,500.00	3,250.00
(7) Item 65 (claim against Robert Donat)	21,886.36	None
Totals	\$ 509,571.34	\$ 166,914.72
Difference		342,656.62
(c) Transfers during decedent's life:		
(8) Item 1	\$ 283,769.62	\$ 283,769.62
(9) Item 2	188,275.31	188,275.31
Totals	\$ 472,044.93	\$ 472,044.93
Adjustments — none		

It is held by The Tax Court of the United States that "property transferred to a trust under which the life estate in the income was reserved to the donor is includible in the gross estate of deceased donor under section 811(c) Internal Revenue Code."

Allowance as shown
in statutory notice as revised

(d) Debts of decedent:		
(10) Item 4	none	none
(11) Item 26	none	\$20,681.00
	none	\$20,681.00
Difference (decrease)		\$20,681.00

A claim of Mildred Selznick against the decedent's estate in the amount of \$27,575.00 is allowable as a deduction for federal estate tax purposes in the amount of \$20,681.00.

Schedule 2 (Continued)

Estate of Myron Selznick

Date of Death: March 23, 1944

Recomputation Statement

(c) Federal and state income taxes and state property taxes and interest thereon accrued prior to the date of the decedent's death, and administration expenses incurred by the estate, not claimed in the estate tax return nor allowed in the 90-day letter are properly deductible in an amount of \$33,589.79.

Schedule 3

Computation of Estate Tax

Net estate for basic tax, Schedule 1..	\$1,378,434.18
Net estate for additional tax, Schedule 1	\$1,418,434.18
Gross basic tax	\$ 78,774.73
Credit for estate and inheritance tax	None
Net basic tax	\$ 78,774.73
Total gross taxes (basic and additional)	\$ 493,942.36
Gross basic tax	78,774.73
Gross additional tax	415,167.63
Total net basic and additional taxes	\$ 493,942.36
Estate tax assessed: July 1945 list, Page 102, Line 3....	294,099.92
Deficiency	\$ 199,842.44

[Title of Court and Cause.]

STIPULATION WITH RESPECT TO ENTRY
OF DECISION UNDER RULE 50

It is hereby stipulated and agreed by the parties to the above-entitled proceeding by their respective counsel as follows:

1. The Tax Court may enter its decision based upon respondent's computation for entry of decision which was filed with the Court on May 3, 1949, both parties reserving, however, the right to contest the correctness of such decision in the appellate courts as provided by statute.

2. In the event that evidence of payment of State inheritance taxes is filed before the expiration of 60 days after the decision of the Tax Court of the United States becomes final the deficiency of \$199,842.44, which is computed without reference to credit for such State inheritance taxes, shall be appropriately reduced.

3. In the event that proceedings are had in the appellate courts, the deficiency above mentioned shall be reduced still further in such amount as will reflect a deduction for legal fees and expenses incident to such appellate proceedings, no deduction therefor having been reflected in respondent's computation filed May 3, 1949.

4. The respondent will, upon request, join petitioners in requesting the Court of Appeals for the Ninth Circuit or the Supreme Court of the United States to remand this proceeding to the Tax Court for the purpose of revising the deficiency to carry

out the provisions of paragraphs 2 and 3 of this stipulation.

Dated: May 23, 1949.

/s/ JOSEPH D. BRADY,

/s/ LUCIEN W. SHAW,

Counsel for Petitioners.

/s/ CHARLES OLIPHANT,

Chief Counsel, Bureau of Internal Revenue.

Filed May 31, 1949 T.C.U.S.

[Title of Court and Cause.]

DECISION

Under written stipulation signed by counsel for the parties in the above-entitled proceedings and filed with the Court on May 31, 1949, at Washington, D. C., it is

Ordered and Decided: That there is a deficiency in estate tax of \$199,842.44.

[Seal] /s/ ERNEST H. VAN FOSSAN,
Judge.

Entered June 3, 1949.

Served June 3, 1949.

[Title of Court and Cause.]

ORDER AND DECISION

Pursuant to the Court's Memorandum Opinion entered April 1, 1949, the respondent filed a proposed computation of tax on May 3, 1949, and a written stipulation signed by counsel for the parties having been filed on May 31, 1949, now, therefore, it is

Ordered and Decided: That the decision entered herein on June 3, 1949, be and the same is hereby vacated and set aside, and it is further

Ordered and Decided: That there is a deficiency in estate tax of \$199,842.44.

/s/ C. R. ARUNDELL,

Judge.

Entered June 7, 1949.

Served June 8, 1949.

In the United States Court of Appeals
For the Ninth Circuit

Tax Court Docket No. 14,985

ESTATE OF MYRON SELZNICK, Deceased,
BANK OF AMERICA NATIONAL TRUST
AND SAVINGS ASSOCIATION, DAVID
O. SELZNICK and CHARLES H. SACHS,
Executors,

Petitioners on Review,
vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent on Review.

PETITION FOR REVIEW

To the Honorable Judges of the United States
Court of Appeals for the Ninth Circuit:

Now come Estate of Myron Selznick, Deceased,
Bank of America National Trust and Savings As-
sociation, David O. Selznick and Charles H. Sachs,
Executors, by Joseph D. Brady, Walter L. Nossaman and Lucien W. Shaw, their attorneys, and respectfully show:

I.

Nature of Controversy

Petitioners are executors of the Estate of Myron Selznick who died a resident of Beverly Hills, California, on March 23, 1944.

On January 29, 1932, said decedent executed a Declaration of Trust naming the Citizens National

Trust and Savings Bank of Los Angeles as trustee and said bank accepted said trust.

On January 29, 1932, said decedent transferred to the trust, assets (other than life insurance contracts) having a value on the date of his death of \$152,951.83. Decedent also transferred to the trust nine life insurance contracts owned by him. The portion of the proceeds of said life insurance contracts (as of the date of decedent's death) allocable to premiums paid prior to January 10, 1941, was \$148,805.10.

The respondent in his 90-Day Letter determined that these transfers to said trust by the decedent were includible in gross estate for Federal estate tax purposes as transfers "intended to take effect in possession or enjoyment at decedent's death" coming "within the provisions of section 811 (c) of the Internal Revenue Code."

Petitioners have denied that said transfers were intended to take effect in possession or enjoyment at decedent's death because all of decedent's rights to income or other possession or enjoyment of the trust assets ended, under the terms of the trust, prior to the date of decedent's death. Therefore, petitioners urge, the transfers were not includible in gross estate under section 302(c) of the Revenue Act of 1926 as amended by the Joint Resolution of March 3, 1931 (Public Number 131, 71st Congress), which was the law applicable to these transfers, nor under section 811(c) I.R.C., cited by the Commissioner.

Petitioners have also asserted that said transfers are not includible in gross estate under any other provision of the Internal Revenue Code, which the respondent did not deny before the Tax Court of the United States.

The Tax Court upheld the determination of the respondent that said transfers were includible in gross estate. In doing so it relied solely upon the decision of the Supreme Court in *Commissioner v. Estate of Francois L. Church, Deceased* (January 17, 1949), although that case involved a trust in which the decedent had reserved a right to income for life ending only at the moment of his death, whereas in this case, under the trust, the decedent's right to income ended before his death. (The Tax Court gave the petitioners no opportunity to be heard on the application of the Church case because that case was decided after petitioners filed their opening brief, and the Court entered its decision without waiting for a brief from the respondent or permitting the petitioners to file the usual reply brief in which the Church case would have been discussed.)

The Tax Court erred:

1. In holding and deciding that transfers of decedent to said trust of \$152,951.83 (with respect to assets other than life insurance contracts) and of \$148,805.10 (with respect to life insurance contracts) were includible in the decedent's gross estate for Federal estate tax purposes.

2. In holding and deciding that there was any

deficiency in Federal estate tax based on including said transfers in gross estate.

3. In rendering an opinion and decision which, in the respects above enumerated, are contrary to the controlling law and regulations and are not supported by any evidence in the case.

II.

Declaration of Court in Which Review Is Sought

Petitioners hereby declare that they seek a review of the decision of the Tax Court of the United States by the United States Court of Appeals for the Ninth Circuit.

III.

Allegations to Establish Venue and Jurisdiction

Myron Selznick, the decedent herein, died a resident of Beverly Hills, California, on March 23, 1944. His estate is being administered under the laws of the State of California. The petitioners herein, Bank of America National Trust and Savings Association, a national banking association, David O. Selznick, and Charles H. Sachs, are the duly appointed and acting executors of the last will and testament of Myron Selznick. This case involves the Federal estate tax liability of petitioners as executors of said estate.

Venue in the United States Court of Appeals for the Ninth Circuit is established by the fact that the petitioners' estate tax return (Form 706) was filed with the Collector of Internal Revenue for the Sixth District of California, located at Los Ange-

les, which collection district is within the jurisdiction of the Court of Appeals for the Ninth Circuit, and by the fact that the parties hereto have not stipulated that the decision by the Tax Court may be reviewed by any Court of Appeals other than the one herein designated.

The amount of the deficiency in estate tax determined by the Tax Court (prior to the allowance of any credit for State inheritance tax) was \$199,842.44. Said deficiency represents the estate tax payable as a result of inclusion in gross estate of (a) certain amounts to which the parties agreed in a stipulation dated and filed with the Tax Court on November 29, 1948, and which are not in controversy, and (b) the transfers to the trust dated January 29, 1932, made by decedent and referred to under heading I above, the inclusion of which in the gross estate represents the matter in controversy on this appeal.

The proceedings upon which the decision of the Tax Court determining said deficiency was based, were as follows: On April 1, 1949, the Tax Court promulgated its Memorandum Opinion (per Judge Van Fossan), holding that said transfers to the trust, described under heading I above, were includible in gross estate. Thereafter, based on the fact that they had had no opportunity to argue the nonapplicability of the Church decision referred to in heading I above, the petitioners filed with the Tax Court (1) on April 13, 1949, a Motion to Withdraw Memorandum Opinion and to permit Filing of Petitioners' Supplementary Brief, which motion

was denied by the Tax Court on April 14, 1949, and (2) on April 25, 1949, a Motion for Review by the Court of Report of a Division, which motion was denied by the Tax Court on April 27, 1949.

On June 7, 1949, pursuant to its Memorandum Opinion, the Tax Court entered its Order and Decision that there is a deficiency in estate tax of \$199,842.44. This petition for review is for a review of said decision by the Tax Court holding that transfers to the trust made by the decedent on January 29, 1932, in the total amounts of \$152,951.83 and \$148,805.10 respectively are to be included in gross estate, and is filed pursuant to the provisions of sections 1141 and 1142 of the Internal Revenue Code.

Wherefore, Petitioners pray that the decision of the Tax Court of the United States be reviewed by the United States Court of Appeals for the Ninth Circuit; that a transcript of the record be prepared in accordance with the law and the rules of said Court and be transmitted to the Clerk of said Court for filing; and that appropriate action be taken to the end that the errors herein complained of may be reviewed and corrected by said Court.

Dated July 26, 1949.

/s/ JOSEPH D. BRADY,

/s/ WALTER L. NOSSAMAN,

/s/ LUCIEN W. SHAW,

Counsel for Petitioners on
Review.

Filed July 29, 1949 T.C.U.S.

In the Tax Court of the United States

Docket No. 14,985

ESTATE OF MYRON SELZNICK, Deceased,
BANK OF AMERICA NATIONAL TRUST
AND SAVINGS ASSOCIATION, DAVID
O. SELZNICK and CHARLES H. SACHS,
Executors,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITIONERS' DESIGNATION OF
CONTENTS OF RECORD ON REVIEW

To the Clerk of the Tax Court of the United States:

The above-designated petitioners, being also the petitioners on review, hereby designate for inclusion in the record for consideration by the United States Court of Appeals for the Ninth Circuit on review of the decision of the Tax Court of the United States entered in said proceeding on June 7, 1949, the entire record as follows:

1. The docket entries of all proceedings before the Tax Court.

2. Pleadings before the Tax Court, including:

(a) Petition, including annexed Exhibit A (being a copy of deficiency letter and statement attached thereto).

(b) Answer.

3. Stipulation between the parties dated November 29, 1948, and filed with the Tax Court upon said date.

4. Exhibits to the stipulation referred to in paragraph 3, as follows:

(a) Exhibit 1-A—Declaration of Trust. Three duplicate copies of said Exhibit are filed herewith; the proper number thereof may be compared and certified and included in the record.

(b) Exhibits 2-B, 3-C, 4-D, 5-E, 6-F, 7-G, 8-H, 9-I and 10-J—insurance policies. Copies of said exhibits may be included in the record, except that, if the United States Court of Appeals for the Ninth Circuit orders and directs the transmission of the original exhibits on file with the Clerk of the Tax Court to said Court of Appeals in their original form for the inspection of that Court, the transmission of such original exhibits shall be made in lieu of copying the same into the record.

(c) Exhibit 11-K—Statement of Payments of Net Income to Myron Selznick from Trust Number 6969, Made by Citizens National Trust and Savings Bank of Los Angeles as Trustee. Three duplicate copies of said Exhibit are filed herewith; the proper number thereof may be compared and certified and included in the record.

5. The Memorandum Opinion of the Tax Court entered April 1, 1949.

6. Motion to Withdraw Memorandum Opinion and to Permit Filing of Petitioners' Supplementary Brief and Supplementary Brief, filed April 13.

1949, and order denying said motion, dated April 14, 1949.

7. Motion for Review by the Court of Report of a Division, filed April 25, 1949, and order denying said motion dated April 27, 1949.

8. Respondent's Computation for Entry of Decision filed May 3, 1949.

9. Stipulation with respect to Entry of Decision Under Rule 50 filed May 31, 1949.

10. Decision entered June 3, 1949.

11. Order and Decision entered June 7, 1949.

12. Petition for Review by the United States Court of Appeals for the Ninth Circuit.

13. Notice of Filing Petition for Review, together with proof of service thereof and of service of a copy of the Petition for Review.

14. This Designation of Contents of Record on Review.

Request is hereby made that a transcript of said record be prepared, certified and transmitted by the Clerk of the Tax Court of the United States to the Clerk of the United States Court of Appeals for the Ninth Circuit as required by law and the rules of said Circuit Court of Appeals.

Dated: July 26, 1949.

/s/ JOSEPH D. BRADY,

/s/ WALTER L. NOSSAMAN,

/s/ LUCIEN W. SHAW,

Counsel for Petitioners.

Personal service of a copy of the foregoing Designation is hereby acknowledged as having been made this 1st day of August, 1949.

GEORGE J. SCHOENEMAN,
Commissioner of Internal
Revenue, Respondent.

/s/ CHARLES OLIPHANT,
Chief Counsel for the Bureau
of Internal Revenue.

Filed July 29, 1949 T.C.U.S.

Undocketed

In the United States Court of Appeals
For the Ninth Circuit

Tax Court Docket No. 14,985

ESTATE OF MYRON SELZNICK, Deceased,
BANK OF AMERICA NATIONAL TRUST
AND SAVINGS ASSOCIATION, DAVID
O. SELZNICK and CHARLES H. SACHS,
Executors,

Petitioners on Review,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent on Review.

MOTION FOR TRANSMISSION OF ORIG-
INAL EXHIBITS ON FILE WITH THE
TAX COURT.

To the Honorable William Denman, Chief Judge

of the United States Court of Appeals for the Ninth Circuit, and to the other Judges of said Court:

The above-designated petitioners on review were petitioners in a proceeding before the Tax Court of the United States, bearing docket number 14,985, in which proceeding the Tax Court rendered its decision on June 7, 1949, that there is a deficiency in federal estate tax owing by said petitioners in the amount of \$199,842.44. Petitioners have duly filed their petition for a review of said decision by this Court, and have filed their designation of the contents of the record on review. In said designation it is requested that there be included in said record the complete record of all the proceedings taken before the Tax Court of the United States, together with copies of exhibits, except that if the United States Court of Appeals for the Ninth Circuit directs the transmission of certain of said exhibits, namely, Exhibits 2-B, 3-C, 4-D, 5-E, 6-F, 7-G, 8-H, 9-I and 10-J, which are photostatic copies of insurance contracts, for the inspection of the Court of Appeals, said exhibits may be omitted from the transcript prepared by the Clerk of the Tax Court and transmitted in original form.

The exhibits referred to are photostatic copies of insurance contracts which it would be impractical to attempt to copy in a form which would be intelligible to this Court.

Petitioners therefore respectfully request that this Court direct the Clerk of the Tax Court to

furnish to this Court the original exhibits numbered 2-B, 3-C, 4-D, 5-E, 6-F, 7-G, 8-H, 9-I and 10-J, on file with the Clerk of the Tax Court in said proceeding, bearing docket number 14,985, in the files of said Court, said original exhibits to be in lieu of copying the same into the transcript prepared by the Clerk of the Tax Court of the record on review herein.

Dated: July 29, 1949.

/s/ JOSEPH D. BRADY,

/s/ WALTER L. NOSSAMAN,

/s/ LUCIEN W. SHAW,

Counsel for Petitioners on
Review.

[Title of Court of Appeals and Cause.]

ORDER DIRECTING TRANSMISSION OF
ORIGINAL EXHIBITS ON FILE WITH
THE TAX COURT

The above-designated petitioners on review have duly filed their petition for a review of the decision of the Tax Court of the United States in a proceeding before said Tax Court bearing docket number 14,985, which decision was entered by said Court on June 7, 1949. Said petitioners have also duly filed their designation of the contents of the record on review and have presented to this Court their motion for transmission of original exhibits on file

with the Tax Court in lieu of transcribing said exhibits into the record on review.

Accordingly, It Is Hereby Ordered that the Clerk of the Tax Court of the United States be, and he is hereby, directed to furnish the United States Court of Appeals for the Ninth Circuit the original exhibits numbered 2-B, 3-C, 4-D, 5-E, 6-F, 7-G, 8-H, 9-I and 10-J, on file with the Clerk of the Tax Court in said action, bearing docket number 14,985, in the files of said Court, said original exhibits to be furnished in lieu of copying the same into the transcript prepared by the Clerk of the Tax Court of the record on review herein.

Dated: August 2, 1949.

WILLIAM DENMAN,
Chief Judge of the United States Court of Appeals
for the Ninth Circuit.

HOMER T. BONE,
WILLIAM E. ORR.

A true copy.

Attest. August 3, 1949.

PAUL P. O'BRIEN,
Clerk.

[Seal] By /s/ F. SCHMID,
Deputy.

[Endorsed]: Filed August 2, 1949 U.S.C.A.

[Endorsed]: Received and filed Aug. 8, 1949
T.C.U.S.

The Tax Court of the United States
Washington

Docket No. 14,985

ESTATE OF MYRON SELZNICK, Deceased,
BANK OF AMERICA NATIONAL TRUST
AND SAVINGS ASSOCIATION, DAVID
O. SELZNICK and CHARLES H. SACHS,
Executors,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CERTIFICATE

I, Victor S. Mersch, Clerk of The Tax Court of the United States do hereby certify that the foregoing documents, 1 to 15 inclusive, constitute and are all of the original papers and proceedings on file in my office as called for by the "Designation as to Contents of Record of Review" in the proceeding before The Tax Court of the United States entitled "Estate of Myron Selznick, Deceased, Bank of America National Trust and Savings Association, David O. Selznick and Charles H. Sachs, Executors, Petitioners, v. Commissioner of Internal Revenue, Respondent," Docket Number 14985 and in which the petitioners in The Tax Court proceeding has initiated an appeal as above numbered and entitled, together with a true copy of the docket entries in said Tax Court proceeding, as the same

appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 18th day of August, 1949.

[Seal] /s/ VICTOR S. MERSCH,

Clerk, The Tax Court of the
United States.

[Endorsed]: No. 12335. United States Court of Appeals for the Ninth Circuit. Estate of Myron Selznick, Deceased, Bank of America National Trust and Savings Association, David O. Selznick and Charles H. Sachs, Executors, Petitioners, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review a Decision of The Tax Court of the United States.

Filed August 22, 1949.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals,
For the Ninth Circuit

No. 12335

ESTATE OF MYRON SELZNICK, Deceased,
BANK OF AMERICA NATIONAL TRUST
AND SAVINGS ASSOCIATION, DAVID
O. SELZNICK and CHARLES H. SACHS,
Executors,

Petitioners on Review,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent on Review.

Tax Court Docket No. 14,985

PETITIONERS' DESIGNATION OF
CONTENTS OF RECORD ON REVIEW

To the Clerk of the above-entitled Court, and to
Messrs. Theron L. Candle, Assistant Attorney
General, and Charles Oliphant, Chief Counsel,
Bureau of Internal Revenue, Counsel for Re-
spondent on Review:

The petitioners above, by their attorneys, hereby
designate for inclusion in the transcript of record
upon review the entire record before The Tax Court
of the United States as transmitted to the Clerk
of this Court by the Clerk of the Tax Court, as
follows:

A. Documents to be included in printed record:

	Document No. Designated by Clerk of Tax Court
Docket Entries	1
Petition	2
Answer	3
Stipulation	4
	Portion of
Exhibits 1-A and 11-K.....	5
(For Exhibits 2-B through 10-J, see Heading B., below)	
Memorandum Opinion	6
Motion to Withdraw Memorandum Opinion and to Permit Filing of Petitioners' Supple- mental Brief—Denied	7
Motion for Review by the Court of Report of a Division—Denied	8
Respondent's Computation for Entry of Decision	9
Stipulation with Respect to Entry of Decision Under Rule 50.....	10
Decision	11
Order and Decision.....	12
Petition for Review and Proof of Service.....	13
Petitioners' Designation of Contents of Record on Review (to Tax Court).....	14
Court Order re Original Exhibits.....	15
Certificate and Seal.....	—
Statement of Points on which Petitioners Intend to Rely on Review.....	—
Motion for Consideration of Original Exhibits..	—
Order for Consideration of Original Exhibits (if Granted by Court).....	—

This Designation of Contents of Record on
Review —

B. Exhibits to be considered by the Court in Original form, if ordered by the Court:

If ordered by this Court of Appeals pursuant to Motion and Order filed herewith, Exhibits 2-B, 3-C, 4-D, 5-E, 6-F, 7-G, 8-H, 9-I, and 10-J, which are a part of Document Number 5 as filed with the Clerk of this Court by the Clerk of the Tax Court, shall be considered by this Court in their original form as though set out in the printed record. If this Court does not order the consideration of said Exhibits in their original form, then they shall be included in the printed record by the Clerk herein.

Dated: August 27, 1949.

/s/ JOSEPH D. BRADY,

/s/ WALTER L. NOSSAMAN,

/s/ LUCIEN W. SHAW,

Counsel for Petitioners
on Review.

[Title of Court of Appeals and Cause.]

AFFIDAVIT OF SERVICE BY MAIL

State of California,

County of Los Angeles—ss.

Virginia L. Haroff, being first duly sworn, deposes and says: That this affiant is a citizen of the United States of America, a resident of the County of Los Angeles, over the age of eighteen years, not

a party to the within and above entitled action; that this affiant is making this service for Joseph D. Brady, Walter L. Nossaman and Lucien W. Shaw, who are the attorneys for the Petitioners in this action.

That on the 29th day of August, 1949, affiant served the within Petitioners' Designation of Contents of Record on Review on the Respondent in this action by placing a true copy thereof in an envelope addressed to one of the attorneys of record for said Respondent at the business address of said attorney, as follows: Theron L. Caudle, Esq., Assistant Attorney General, Department of Justice, Washington 25, D. C., by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California.

That there is delivery service by United States mail at the place so addressed or there is a regular communication by mail between the place of mailing and the place so addressed.

/s/ VIRGINIA L. HAROFF.

Subscribed and sworn to before me this 29th day of August, 1949.

[Seal] /s/ JULIA M. FITZSIMMONS,
Notary Public, in and for the County of Los Angeles, State of California.

My commission expires February 17, 1952.

[Endorsed]: Filed Aug. 30, 1949.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH PETITIONERS INTEND TO RELY ON REVIEW

Petitioners hereby designate the following as the points upon which they intend to rely in the review of the above proceeding by the United States Court of Appeals for the Ninth Circuit:

1. The Tax Court of the United States erred in deciding that transfers of decedent to a trust created on January 29, 1932, totaling \$301,756.93, were includible in the decedent's gross estate for federal estate tax purposes, in reliance solely upon the decision of the Supreme Court in the case of *Commissioner v. Francois L. Church, Deceased*, (1949) 335 U. S. 632, 69 S.Ct. 322, without giving petitioners any opportunity to argue the effect of such decision herein.

2. The decedent did not retain for his life, or any period not ending before his death, the possession or enjoyment of, or the income from, the property thus erroneously included in decedent's gross estate by the Tax Court. (Sec. 302(c)(1) of the Revenue Act of 1926, as amended by the Joint Resolution of March 3, 1931.)

3. The decedent did not retain for his life or any period not ending before his death the right to designate the persons who shall possess or enjoy the property thus erroneously included in gross estate by the Tax Court, or the income therefrom. (Sec. 302(c)(2) of the Revenue Act of 1926, as amended by the Joint Resolution of March 3, 1931.)

4. With respect to none of the property erroneously included in decedent's gross estate by the Tax Court, was the enjoyment thereof as of the date of decedent's death subject to any change through the exercise of a power either by the decedent alone, or in conjunction with any person, to alter, amend or revoke. (Sec. 302(d), Revenue Act of 1926.)

5. With respect to life insurance contracts which were a part of the property erroneously included in the decedent's gross estate by the Tax Court, at no time after January 10, 1941, did the decedent possess any incident of ownership therein. (Sec. 811 (g), Internal Revenue Code.)

6. The Tax Court erred in holding and deciding that there was any deficiency in Federal estate tax based on including in gross estate said transfers by decedent of property to said trust.

7. The Tax Court erred in rendering an opinion and decision which, in the respects above enumerated, are contrary to the controlling law and regulations, and are not supported by any evidence in the case.

Dated: August 27, 1949.

/s/ JOSEPH D. BRADY,
/s/ WALTER L. NOSSAMAN,
/s/ LUCIEN W. SHAW,

Counsel for Petitioners
on Review.

[Title of Court of Appeals and Cause.]

AFFIDAVIT OF SERVICE BY MAIL

State of California,
County of Los Angeles—ss.

Virginia L. Haroff, being first duly sworn, deposes and says: That this affiant is a citizen of the United States of America, a resident of the County of Los Angeles, over the age of eighteen years, not a party to the within and above entitled action; that this affiant is making this service for Joseph D. Brady, Walter L. Nossaman and Lucien W. Shaw, who are the attorneys for the Petitioners in this action.

That on the 29th day of August, 1949, affiant served the within Statement of Points on Which Petitioners Intend to Rely on Review on the respondent in this action by placing a true copy thereof in an envelope addressed to one of the attorneys for record for said Respondent at the business address of said attorney, as follows: Theron L. Caudle, Esq., Assistant Attorney General, Department of Justice, Washington 25, D. C., by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California.

That there is delivery service by United States mail at the place so addressed or there is a regular

communication by mail between the places of mailing and the place so addressed.

/s/ VIRGINIA L. HAROFF.

Subscribed and sworn to before me this 29th day of August, 1949.

[Seal] /s/ JULIA M. FITZSIMMONS,
Notary Public, in and for the County of Los Angeles, State of California.

My commission expires February 17, 1952.

[Endorsed]: Filed Aug. 30, 1949.

[Title of Court of Appeals and Cause.]

MOTION FOR CONSIDERATION OF
ORIGINAL EXHIBITS

On August 2, 1949, the Honorable William Denman, Chief Judge of the United States Court of Appeals for the Ninth Circuit, and the Honorable Homer T. Bone and the Honorable William E. Orr, Judges of said Court, made an order directing that the Clerk of the Tax Court of the United States furnish to this Court original exhibits Numbers 2-B through 10-J, on file with the Clerk of the Tax Court in this proceeding, bearing Docket Number 14,985 in the files of said Court, said original exhibits to be furnished in lieu of copying same into the transcript prepared by the Clerk of the Tax Court of the record on review herein. The record on review, including said original exhibits, was transmitted to the Clerk of this Court by a letter dated August 18, 1949.

Said exhibits transmitted in their original form are photostatic copies of insurance contracts, which would be impractical to attempt to reproduce in printing in a form which would be intelligible to this Court.

Petitioners on review therefore respectfully request that this Court make its order that each of the aforesaid exhibits transmitted in original form, being Numbers 2-B through 10-J, be omitted from the printed record herein and instead be considered by the Court in connection with this review in their original form as though set out in the printed record upon said review.

Dated: August 27, 1949.

/s/ JOSEPH D. BRADY

/s/ WALTER L. NOSSAMAN

/s/ LUCIEN W. SHAW

Counsel for Petitioners
on Review.

[Title of Court of Appeals and Cause.]

ORDER FOR CONSIDERATION OF
ORIGINAL EXHIBITS

The above-designated petitioners on review have duly filed their motion for consideration in their original form of certain exhibits heretofore transmitted to this Court by the Clerk of the Tax Court of the United States, and good cause therefor appearing:

It Is Hereby Ordered that Exhibits 2-B, 3-C, 4-D, 5-E, 6-F, 7-G, 8-H, 9-I, and 10-J, heretofore transmitted to this Court in their original form and now in the files of the above-entitled proceeding on review in this Court, shall be omitted from the printed record on review herein; and that said omitted exhibits shall be considered by this Court in connection with this review in their original form as though set out in said printed record on review.

Dated: August 30, 1949.

/s/ WILLIAM DENMAN

/s/ WILLIAM HEALY,

/s/ HOMER T. BONE

Judges U. S. Court of Appeals
for the Ninth Circuit

[Title of Court of Appeals and Cause.]

AFFIDAVIT OF SERVICE BY MAIL

State of California,

County of Los Angeles—ss.

Virginia L. Haroff, being first duly sworn, deposes and says: That this affiant is a citizen of the United States of America, a resident of the County of Los Angeles, over the age of eighteen years, not a party to the within and above entitled action; that this affiant is making this service for Joseph D. Brady, Walter L. Nossaman and Lucien W. Shaw, who are the attorneys for the Petitioners in this action.

That on the 29th day of August, 1949, affiant served the within Motion for Consideration of Original Exhibits on the Respondent in this action by placing a true copy thereof in an envelope addressed to one of the attorneys of record for said Respondent at the business address of said attorney, as follows: Theron L. Caudle, Esq., Assistant Attorney General, Department of Justice, Washington 25, D. C., by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California.

That there is delivery service by United States mail at the place so addressed or there is a regular communication by mail between the place of mailing and the place so addressed.

/s/ VIRGINIA L. HAROFF

Subscribed and sworn to before me this 29th day of August, 1949.

[Seal] /s/ JULIA M. FITZSIMMONS
Notary Public, in and for the County of Los Angeles, State of California.

My commission expires February 17, 1952.

[Endorsed]: Filed Sept. 1, 1949.